TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 236

DOLLREE MAPP, ETC., APPELLANT,

vs.

OHIO.

APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

FILED JULY 14, 1960

PROBABLE JURISDICTION NOTED OCTOBER 24, 1960

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[fol. A]

IN CLEVELAND MUNICIPAL COURT

Examining Court

THE STATE OF OHIO,
CUYAHOGA COUNTY, ss.:

THE STATE OF OHIO

vs.

DOLLREE MAPP

CHARGE

Poss. of Obscene Pictures & Books

Defendant arrested on a warrant founded on an affidavit charging Dollree Mapp with Poss. of Obscene Pictures & Books as therein set forth; said affidavit being made before the Clerk of this Court, by Michael Haney on the 25 day of May A. D. 1957.

Warrant returned on the 27 day of May A. D. 1957, by FRANK T. KELLY, Bailiff of Cleveland Municipal Court, with the body of the defendant and after the examination before Andrew Kovachy Judge of the Court, it is ordered and required of the said defendant that he furnish bail for his personal appearance at the present term of the Court of Common Pleas of Cuyahoga County on the first day of the term thereof, in the sum of $5000.00 or $2500.00 R.E. dollars, or in default thereof to stand committed.

State of Ohio, City of Cleveland, ss.

I, JOHNNY KILBANE, Clerk of Cleveland Municipal Court, do hereby certify that the foregoing is a true transcript of the proceedings had before the said Court in said cause as fully as the same appears on record.

Given under my hand and the seal of said Court this 25 day of June, 1957.

Helen J. Lyons, Clerk of Cleveland Municipal Court.

B

[fol. B]

IN THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY
STATE OF OHIO

INDICTMENT FOR POSSESSION OBSCENE LITERATURE
R C 2905.34—Filed October 8, 1958

THE STATE OF OHIO,
CUYAHOGA COUNTY, *ss.*:

Of the term of September In the year of our Lord one thousand nine hundred and fifty seven.

The Jurors of the Grand Jury of the State of Ohio, within and for the body of the County aforesaid, on their oaths, IN THE NAME AND BY THE AUTHORITY OF THE STATE OF OHIO,

Do Find and Present, That Dolly Mapp on or about the 23rd day of May 1957, at the County aforesaid, unlawfully and knowingly had in her possession and under her control, certain lewd and lascivious Books, Pictures and Photographs, said Books, Pictures and Photographs being so indecent and immoral in their nature that the same would be offensive to the Court and improper to be placed upon the records thereof contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

John T. Corrigan, Prosecuting Attorney.

[fol. C]

IN THE COURT OF COMMON PLEAS

Case No. 68326

[Title omitted]

MOTION TO SUPPRESS EVIDENCE—Filed September 3, 1958

Now comes the defendant by her attorney, A. L. Kearns and moves this honorable court for an order suppressing the evidence procured by the police officers, to wit:

Certain claimed lewd and lascivious Books, Pictures and Photographs and intended to be used in evidence in the trial of the aforesaid cause.

For the reason that the aforesaid evidence was not procured by a proper search warrant as provided by Section 2905.35 of the Ohio Revised Code.

A. L. Kearns, Attorney for Defendant.

NOTICE

The State of Ohio will take notice that the defendant has filed the aforesaid motion and that the same will be set for hearing in Court Room No. 1 of the Court of Common P. as Criminal Branch in accordance with the rules of said court.

A. L. Kearns, Attorney for Defendant.

[fol. D] Copy of aforesaid motion received this 3rd day of September, 1958.

John T. Corrigan, Prosecuting Attorney.

[File endorsement omitted]

[fol. E]

IN THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY
STATE OF OHIO

No. 68326

Indictment Possession of Obscene Literature

STATE OF OHIO, Plaintiff,

—VS—

DOLLREE MAPP (DOLLY MAPP), Defendant.

EXCERPTS FROM DOCKET AND JOURNAL ENTRIES

* * * * * * *

[fol. F] September 3, 1958: Motion to Suppress Evidence filed.

September 3, 1958: To Court: This cause came on this day for hearing on defendant's motion to suppress evidence, and the court upon hearing overrules the same.

* * * * * * *

D

[fol. G] And the said jury having heard all the testimony adduced by the parties, the arguments of counsel, and the charge of the court, retired to their room, in charge of the bailiff, for deliberation. And now come the jury, conducted into court by the bailiff, and return the following verdict in writing, to-wit: "We, the jury in this case, being duly impaneled and sworn, do find defendant Dollree Mapp guilty of possession of obscene literature as charged in the indictment."

. . . . . .

[fol. 1]

IN THE COURT OF COMMON PLEAS

CRIMINAL BRANCH

No. 68326

STATE OF OHIO, Plaintiff,

vs.

DOLLREE MAPP, Defendant.

Defendant's Bill of Exceptions

[fol. 3] State of Ohio,
County of Cuyahoga, *ss.*:

IN THE COURT OF COMMON PLEAS

CRIMINAL BRANCH

No. 68326

STATE OF OHIO, Plaintiff,

vs.

DOLLREE MAPP, Defendant.

Be It Remembered That, heretofore, to-wit, on Wednesday, the 3rd day of September, 1958, being one of the regular days of the September, 1958, term of said court, this cause came on for trial before Hon. Donald F. Lybarger,

one of the judges of said court, and a jury, in Courtroom No. 1, and the following proceedings were had:

The Court: This is the matter of the State of Ohio versus Dollree Mapp. The defendant and counsel are in court, the prosecutor is in court. I have before me a motion to suppress evidence. Mr. Kearns, you bring that on behalf of the defendant?

[fol. 4] Mr. Kearns: Yes. May it please your honor, this motion to suppress the evidence in this case is based upon Section 2905.35 of the Ohio Revised Code, which became effective October 6, 1955; the statute under which this defendant has been indicted became effective October 6, 1955. We are well aware of the decision of the Ohio Supreme Court by a four to three vote of the Lindway case in 131 Ohio State. But that is many years prior to the passing by our legislature of this particular statute under which this defendant is charged, and the decision of the Supreme Court in the Lindway case is many years prior to the passage of the search warrant statute by our legislature, providing the search warrant for matters mentioned in 2905.34.

We therefore say to this court very respectfully and earnestly that the legislature undoubtedly was aware of the decision in the Lindway case at the time that they passed these two statutes, 34 and 35, providing for search warrants in matters pertaining to 34. So we say to your honor that it is necessary under these statutes enacted by our legislature, that a search warrant set forth such statutes specifically by a magistrate or a judge of any court having jurisdiction . . . shall issue warrants to search such house [fol. 5] or place upon written complaint, supported by oath or affirmation, that any person within the jurisdiction of such magistrate or court, has violated or is violating the several sections thereto, including Sections 2905.33 and 34, of the Revised Code, may issue a warrant to search a building or other place where such item may be located," and so on.

Now we say that the State of Ohio did not have a search warrant setting forth the items that are mentioned in this indictment, and which the State of Ohio intends to use

as evidence in this cause against this defendant, and for that reason we are asking that that particular evidence be suppressed.

[fol. 8] Plaintiff's Case

Whereupon the plaintiff, to maintain the issues on its part to be maintained, called as a witness, MICHAEL HANEY, who, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mrs. Mahon:

Q. State your name, please.
A. Michael Haney.
Q. Your address?
A. 14026 Berwald Avenue, Cleveland.
Q. Are you a member of the Cleveland police department?
A. I am.
Q. And assigned to what department?
A. The bureau of special investigations.
Q. What is your title?
A. I am a patrolman assigned to the bureau of special investigations.

[fol. 9] Q. How long have you been a police officer?
A. Twelve and a half years.
Q. Do you have a partner that you work with, officer?
A. Yes, I have two partners.
Q. What are their names?
A. Sergeant Carl Delau and patrolman Thomas Dever.
Q. Directing your attention to May 23 of last year, 1957, did you and your partners have occasion to go to the home of one Dolly Mapp?
A. Yes, we did.
Q. And where did she live at that time?
A. 14705 Milverton Road, upstairs.
Q. Can you describe that place, officer?
A. It is a two-family brick dwelling, suite down and

suite up; there is a front entrance and a side entrance, full basement underneath the premises; there is a living room, kitchen, dinette, two bedrooms and bath on the second floor.

Q. Did she live on the second floor?

A. Yes, she did.

Q. Is that a brick or a frame home?

A. That is a brick home.

Q. Were you with Delau and Dever then?

A. Yes.

Q. About what time did you get out there?

A. About one or one-thirty in the afternoon.

[fol. 10] Q. Do you see the Dolly Mapp that you refer to in the courtroom here?

A. Yes, I do.

Q. Will you point her out?

A. She is seated opposite yourself at the table behind Mr. Kearns.

Mrs. Mahon: Indicating the defendant.

Q. Do you know her by any other name?

A. Yes, by Dollree Mapp, or Dollree Bivins.

Q. What was the purpose of you officers in going to her home on that particular day?

A. On that particular day we had received information from a confidential source that there was a person hiding out in the home, who was wanted for questioning in connection with a recent bombing, and that there was a large amount of policy paraphernalia being hidden in the home, either in the basement or the suite on the second floor.

Q. Do you know who occupied the first floor suite?

A. No.

Q. Did you have occasion while you were out there to go into the first floor suite at all?

A. Only to the door of the first floor suite.

Q. After you arrived there what happened?

A. Upon our arrival at the address we rang the bell at the side of the house for the second floor; Mrs. Mapp came to the window and asked us what we wanted. We stated [fol. 11] we would like to come in and talk to her, and she stated—first, she wouldn't let us in, and then she stated—after several minutes of conversation she said, "I'll call

my attorney, Mr. Green, and see if he thinks I should let you in." She then removed herself from the window and came back and she said "I have been advised by my attorney not to let you in without a search warrant." A search warrant was brought out after an hour and a half or two hour delay, brought to the premises, and the officers were admitted by Mrs. Mapp from the sidewalk.

Q. Then what happened?

A. I remained outside until a considerable length of time, and see that nobody left the premises. After they had been admitted Sergeant Delau called me and said "Come on in." I went to the second floor, where he proceeded to search the second floor of the residence there, and went to the rear bedroom there, which, as we were about to enter, Mrs. Mapp said "This is my room." Mrs. Mapp sat on the bed when Delau proceeded to search the chest of drawers on the left wall as you leave the room. I began searching a dresser which would be located on the rear wall beside the bed in that room. In searching through the dresser I came upon four books. In removing them Mrs. Mapp saw them and said, "Better not look at those; they [fol. 12] might excite you." I then looked at the books and found them to be obscene. I further made search of the dresser and found nothing else in that. I searched the suit cases and found a photo album pictures of herself. Among other stuff a pencil drawing on paper of a very obscene nature. Upon showing it to Mrs. Mapp she refused to say anything more about it, offer any more comment, what it was and why it was there.

Q. You say that was in the suit case?

A. That was in the suit case beside the bed in the rear bedroom.

Q. The same bedroom?

A. The same bedroom, yes.

Q. Do you know who that belonged to?

A. Mrs. Mapp stated it was her suitcase. Also in the suitcase we found personal papers with Mrs. Mapp's name on them.

Q. Then what did you do?

A. During this time we were up in the bedroom together, Sergeant Delau found four separate groups of vulgar pic-

tures. We took all the evidence, put it together, conveyed Mrs. Mapp and the stuff to the Central Police Station, and consulted the police prosecutor, and warrant was issued for the arrest of Mrs. Mapp.

Q. Where were the pictures found?

A. In the chest of drawers, the same bedroom in which we had found the other stuff.

[fol. 13] Q. Was any other person in that suite at the time you were conducting this search, officer?

A. There were other police officers there.

Q. I mean besides police officers?

A. Not to my knowledge.

Q. Did you have any conversation with Mrs. Mapp as to who occupied her suite?

A. We questioned who occupied her suite, and she said her and her daughter, Barbara, occupied the suite at that particular time, yes.

Q. You said there were two bedrooms?

A. Yes, there were two bedrooms, one coming off the hallway by the bath, bedroom off to the left, which we checked. It had child's clothing, child's paraphernalia, child's room. Directly to the rear of the residence is the room occupied by Mrs. Mapp. She stated at the time the stuff might belong to Morris Jones, who had lived in that room, yet there was no men's clothing, clothing men would have.

Q. There were ladies' clothing in that bedroom?

A. Yes, in that bedroom.

Q. Ladies paraphernalia?

A. Cosmetics, and so forth.

Q. How long were you out there altogether that day?

A. I would say we were out there two and a half or three hours.

Q. Did you have any occasion to go into the basement at [fol. 14] that place while you were there?

A. I don't believe I was in the basement at all.

Q. Did any of the other officers go there?

A. Yes, patrolman Dever searched the basement; I don't know whether Sergeant Delau was down there or not.

Q. You say you took Mrs. Mapp into the station then?

A. Yes, we did.

Q. What did you do with those books and pictures, and so forth?

A. They were marked for identification and turned over to the property room at Central Police Station.

Q. This home of Mrs. Mapp's, is that in Cuyahoga County?

A. Yes, it is.

Q. Is that Cleveland?

A. That is in Cleveland.

Q. In Cleveland proper?

A. Yes.

Mrs. Mahon: Mark these.

(Thereupon booklets were marked by the reporter for identification State's Exhibits 1, 2, 3, 4, respectively.)

Q. You were present when Sergeant Delau found the pictures here in the dresser?

A. Yes, I was.

Q. Officer, showing you what is identified as State's Exhibit 1, what can you tell us about that?

A. That is a book entitled "The Affairs of the Trou-
[fol. 15] bador." It has my initials, "M.H.", the date "5-23-57." It was one of the books found in the dresser drawer on this date.

Q. Showing you what has been identified as State's Exhibit 2, what can you tell us about that?

A. This book is entitled "Little Darlings," has my initials, and the date 5-23-57, inscribed on the second page, which was found at the residence of Mrs. Mapp May 23, 1957, in the dresser drawer.

Q. Showing you what has been identified as State's Exhibit 3, do you recognize it?

A. Yes, I do.

Q. And what is it?

A. That is a book entitled "London Stage Affairs," has my initials inscribed on the second page, date May 23, 1957. That is another of the books found in the dresser drawer at Mrs. Mapp's residence.

Q. Showing you what has been identified as State's Exhibit 4, do you recognize that?

A. Yes, I do.

Q. And that is what?

A. It is a book entitled "Memories of a Hotel Man," has my initials inscribed on the inner page, and date 5-23-57. That is the fourth of the four books found in the dresser drawer of Mrs. Mapp's residence, May 23, 1957.

Mrs. Mahon: Mark these.

[fol. 16] (Thereupon papers were marked by the reporter for identification State's Exhibits 5, 6, 7, 8, 9, respectively.)

Q. Officer, showing you what has been identified as State's Exhibit 5, what can you tell us about that?

A. That is a piece of paper with some obscene drawings on it in pencil. My initials are inscribed on the lower right hand corner, which was found in the suit case beside the bed in Mrs. Mapp's room May 23, 1957.

Q. I believe you testified here you found other personal papers in that suit case?

A. Yes, photos and personal papers in the suit case.

Q. Showing you what is identified as State's Exhibit 6, officer, do you recognize that?

A. Yes, I do.

Q. And what is it?

A. It is a diet slip; patient, Mrs. Mapp, date June 9, 1956. That was found in the same suit case the other picture was found in.

Q. This was found in the suit case along with that picture?

A. Yes.

Q. Showing you what is identified as State's Exhibit 7, do you recognize that?

A. Yes, I do. That is an affidavit found in the same suit case along with the diet slip and the picture, the drawing.

[fol. 17] Q. And State's Exhibit 8, do you recognize that?

A. Yes, I do.

Q. And what is it?

A. It is a picture of Mrs. Mapp and two other persons in a folder from the Chatterbox Musical Bar and Grill, found in the same suit case with the other exhibits.

Q. Showing you State's Exhibit 9, what is that, officer?

A. That is also a picture of Mrs. Mapp and the same two persons in State's Exhibit 8, in a folder of the Chatterbox Musical Bar. That was also found in the suit case.

Q. Along with the picture?

A. Along with the picture, yes.

Q. Do you know, officer, of your own knowledge, how long Mrs. Mapp had lived at that address?

A. I am not certain how long she lived there.

Q. Did you have any conversation about that?

A. We had questioned her who owned the home; she stated that she did, that she had moved to New York for a short time, and had leased the house, and upon her return had lived on Lee Road for a short time, and then returned to her own residence on Milverton. I don't know exactly how long she had been back there.

Mrs. Mahon: Mark these.

(Thereupon photographs were marked by the reporter for identification State's Exhibits 10, 11, 12, 13, respectively.)

[fol. 18] Q. Officer, I am showing you what is identified as State's Exhibit 11. Do you recognize that?

A. Yes, I do.

Q. What can you tell us about it?

A. That is the obscene photo that was found in the chest of drawers by Sergeant Delau, at Mrs. Mapp's residence on Milverton Road; it has my initials inscribed in the corner.

Q. Showing you what is identified as State's Exhibit 10. Do you recognize that?

A. Yes, I do.

Q. And what is it?

A. That is also the group of obscene pictures, or one group, and has my initials in the corner, dated 5-23-57, one of the four which was found in the chest of drawers in Mrs. Mapp's home by Sergeant Delau.

Q. I show you what is identified as State's Exhibit 12. What is that?

A. This is also a group of obscene pictures, one of the four which was found in the chest of drawers in Mrs. Mapp's dresser by Sergeant Delau, May 23, 1957; it has my initials down in the corner.

Q. I show you what is identified as State's Exhibit 13. What is that?

A. That is a group of obscene pictures, and one of the group found in the chest of drawers, along with the three [fol. 19] others, by Sergeant Delau, May 23, 1957, in Mrs. Mapp's bedroom; it has my initials on in the corner.

Mrs. Mahon: I believe that is all.

Cross examination of Michael Haney.

By Mr. Kearns:

Q. Officer Haney, who was the person that you went out there to try to find?

A. We didn't know who the party would be at that address.

Q. You testified you received confidential information that somebody involved in a bombing would be found at that address?

A. Our information was somebody was wanted for bombing in the home, found in the home. We were not told ahead of time who the particular person was, other than it was a man for questioning wanted in the bombing.

Q. Who went out with you?

A. Sergeant Delau and patrolman Thomas Dever.

Q. After you arrived there the lady defendant here said through the window she would call her lawyer to see whether you should be admitted to search without a search warrant; is that right?

A. That's right.

Q. And to your knowledge, as far as you know, she did call me?

A. As far as I know; yes, sir.

Q. Well, didn't one of my assistants get out there, Mr. Walter Green?

[fol. 20] A. Yes, Mr. Green arrived after the lieutenant had gotten there. The search warrant arrived in approximately two hours after we originally got there.

Q. And you did procure a search warrant?

A. I did not, no.

Q. Well, some of the officers?

A. That's right.

Q. But when the search was made there were more officers than you and Sergeant Delau and patrolman Dever that were there?

A. That's right.

Q. How many all together?

A. There was Sergeant Delau, patrolman Dever, Lieutenant White come with a search warrant; Inspector Barrett of the fourth district was there; the captain was there; it could be the captain was there; I am not certain.

Q. Who else?

A. There was a patrolman from one of the zone cars there.

Q. That is seven?

A. Yes.

Q. Four beside the three of you that you counted, you and the sergeant and patrolman Dever?

A. That's right.

Q. Who was the inspector that came?

A. Carl Barrett, in charge of the fourth district.

Q. Any other police officers there at the time this place [fol. 21] was entered and search was being made?

A. Not tha I recall.

Q. Well, do you know what the other police officers were doing besides you and the sergeant that were upstairs in the bedroom?

A. I didn't see what they were doing.

Q. You know what they were doing?

A. Some was searching the basement, yes.

Q. Now, officer, you are speaking of a suitcase in which you found some of these items that have been shown to you; weren't there other things found in the suitcase?

A. There was a photo album, and other obscene pictures which were there, yes.

Q. Did you yourself make a search of the suitcase?

A. Yes, I did.

Q. But you didn't search the dresser drawers?

A. I did search the dresser drawers on the far wall, yes.

Q. Did the sergeant do some searching in the drawers in that room?

A. Yes, the chest of drawers.

Q. Didn't he find anything?

A. He found the four pictures which were presented in evidence here.

Q. And then he brought them out and handed them to you?

A. Yes, he did; he showed them to me and handed them to me.

Q. In other words, you didn't find them, you were present. [fol. 22] Did you know as to where they came from, that is, what the sergeant gave to you?

A. I was in the room when the sergeant found them.

Q. You know you were in the room. Were you looking at them at the time he pulled them out of the drawer?

A. No, I was not.

Q. So that all you know as to where they actually came from, from your own personal knowledge, is what the sergeant told you when he handed them to you?

A. The sergeant searching the drawer turned around and said "Here."

Q. His back was to you when he was searching the drawer?

A. Yes.

Q. So you didn't see him take them out of the drawer, is that right?

A. That's right.

Q. Now in the suitcase wasn't there other things besides the photograph you spoke of, the album,—wasn't there a man's shirt in that suitcase?

A. No, there was not.

Q. Wasn't there anything pertaining to men's clothing in the suitcase?

A. No, sir.

Q. Nothing?

A. Nothing.

[fol. 23] Q. Did you talk to Mrs. Mapp about that particular suitcase, as to who it belonged to?

A. Yes, we did.

Q. And she told you it belonged to her?

A. Yes, she did.

Q. What else, if anything, did she tell you?

A. Nothing.

Q. Didn't she tell you she had loaned the suitcase to Morris Jones, to put some of his things in there?

A. No, she did not.

Q. Isn't it a fact you found a gun in that suitcase?

A. I did not.

Q. Wasn't there a gun in that suitcase?

A. No, there was not.

Q. I will hand you here a standard text book of Cosmetology, and ask you if that wasn't in the suitcase?

A. If it was in there I didn't see it.

Q. Isn't it a matter of fact you took that book out and said you weren't going to take it along, it wasn't necessary,—isn't that a fact?

A. No, it is not.

Q. Isn't it a fact you said about the album, the pictures that you spoke of, that you said that wasn't necessary to take along?

[fol. 24] A. The album of pictures was put back in the suitcase.

Q. But you saw the albums of pictures of Mrs. Mapp, didn't you?

A. Most of them were, yes.

Q. Yes, and you brought other things with her name on it. Why didn't you bring the album out to show that was all in the suitcase?

A. I felt her statement it was her suitcase and the pictures were there, I didn't need any more.

Q. You didn't even need the suitcase itself?

A. No.

Q. And you say there wasn't a gun in the suitcase?

A. No, there wasn't.

Q. Isn't it a fact you asked her whose gun that was?

A. No.

Q. Isn't it a fact she said it belonged to Morris Jones?

A. No, that is not a fact.

Q. Isn't it a fact you asked her who this standard text book of Cosmetology belonged to?

A. No, it is not.

Q. And isn't it a fact that you saw the name on the book itself, "Morris Jones," and that is the reason you refused to take it?

A. That is not a fact.

Q. Now you say that the State's Exhibit 6, which is a diet of Mrs. Mapp's, that was in the suitcase?

[fol. 25] A. That was in the suitcase; yes, sir.

Q. Did you yourself find it in that suitcase?

A. Yes, I did.

Q. Did anybody search the desk in the living room?

A. I don't know whether they did or not.

Q. Didn't you?

A. No, I didn't.

Q. And isn't it a fact that that diet was not found in the suitcase but in the drawer of the desk in the living room?

A. No, it is not a fact; it was found in the suitcase.

Q. Now, officer, I want you to tell this jury, isn't it a fact that some obscene matters were found in a box in the basement where the lottery slips were found?

A. Not to my knowledge. Anything they found and presented here was found in the bedroom.

Q. Didn't you learn that some things were found in the box?

A. Nothing obscene; there was no box found other than the trunk, the policy paraphernalia.

Q. That was in the basement, wasn't it?

A. Yes.

Q. And in the box where that policy paraphernalia was found, was a small brown box with most of this evidence that you have introduced here and state you found; isn't that true, to your knowledge?

Mrs. Mahon: Objection.

[fol. 26] The Court: He may answer.

A. That is not true.

Q. Now, you did find lottery paraphernalia in the basement, didn't you?

A. I didn't, but there was some found; yes, sir.

Q. Some of the seven police officers that made a search found it; is that right?

A. That's right.

Q. And you or no one in the police department ever charged Mrs. Mapp with any possession of any of this policy paraphernalia, did you?

A. Mrs. Mapp was charged with policy paraphernalia in police court.

Q. She was?

A. She was; she was tried.

Q. As a result of this search?

A. Yes, sir.

Q. You mean as a misdemeanor?

A. As a misdemeanor; yes, sir.

Q. To your knowledge, Mr. Green from my office, at the time the search was made, was not permitted inside of the house to watch the search, or what was being done; he was kept outside of the house?

Mrs. Mahon: I am objecting to the form of the question.

[fol. 27] The Court: Yes, you made a statement.

Mr. Kearns: I said "To your knowledge."

The Court: Whether or not that is a fact. Can you answer?

A. Mr. Green remained outside with me. Whether he was kept out or remained out, I couldn't say, because I was outside when Mr. Green went to the house to gain admission.

Q. And you don't know one of the uniformed officers, whether it was the lieutenant or captain, told him he should not go in; do you know that as a fact?

A. I don't know who told him; I don't know whether somebody did; all I know I stayed outside and Mr. Green also remained outside.

Q. Isn't it a fact Mr. Green tried to get in the front door and was refused admission, and he tried to get in the side door and was refused admission by the same officer?

A. I don't know whether he was refused or not; I know he remained outside with me, but I don't know whether he was refused admission.

Q. Now you say Mrs. Mapp was charged with possession of these policy slips and policy paraphernalia?

A. Yes, sir.

Q. And was discharged in the court, wasn't she?

A. Yes, she was.

Mr. Kearns: That's all.

* * * * * * *

[fol. 28] Recross examination of Michael Haney.

By Mr. Kearns:

Q. Officer, isn't it a fact all of the police officers at one time or another were inside of that house?

A. I don't know if they were all in or not.

Q. Most of them were?

A. Most of them, yes, were in the house.

• • • • • • •

[fol. 29] Q. Officer, isn't it a fact that Mrs. Mapp was handcuffed to one of the uniformed police officers while the search was going on?

A. Mrs. Mapp was handcuffed, but there was a uniformed officer there; I couldn't testify whether she was handcuffed to him or merely handcuffed.

• • • • • • •

[fol. 30] By Mr. Kearns:

Q. Where is that search warrant?

A. I don't know.

Q. Do you have it here?

A. I don't have it.

Q. Would you tell the jury who has it?

A. I can't tell the jury who has it; no, sir.

Q. And you were one of the investigating officers in the investigation by the police department?

A. Yes.

Q. But you can't tell us where the search warrant is?

A. No, I cannot.

Q. Or what it recites?

A. No.

• • • • • • •

[fol. 31] Q. You yourself did not obtain the search warrant, did you, officer?

A. No, I did not.

Q. Do you know who did?

A. I was told Lieutenant White obtained it.

• • • • • • •

[fol. 32] Thereupon the State, further to maintain the issues on its part to be maintained, called as a witness, CARL DELAU, who, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mrs. Mahon:

Q. Your name, please?
A. Carl Delau.
Q. What is your address?
A. 1063 Cove Avenue, Lakewood, Ohio.
Q. And you are a member of the Cleveland Police Department?
A. I am.
Q. And in what department are you employed, officer?
A. I am assigned to the Bureau of Special Investigation.
Q. You are a sergeant in the department, aren't you?
A. I am.
Q. How long have you been on the police force?
A. Twelve and a half years.
Q. During the course of your duties, officer, did you have occasion to go to the home of one Dollree Mapp on May 23rd last year?
A. Yes, I did.
Q. Were you alone at the time?
A. No, at that time I had patrolman Haney and patrolman Tom Dever with me.
[fol. 33] Q. About what time did you get there?
A. Got there shortly after one o'clock p.m., in the afternoon.
Q. That is the Dolly Mapp who is sitting in the courtroom?
A. Seated at the table, yes.
Q. Did you know her by any other name?
A. Dollree Mapp, Dollree Bivens. And just suspected—I'll skip that; there was another name with that she had gone by.

Mr. Kearns: May I ask the court to instruct the jury to disregard that last statement, of his suspicion.

The Court: Sustained; the last statement will be disregarded, ladies and gentlemen of the jury.

Q. Will you tell us, officer, what happened when you arrived at her home?

A. We arrived there approximately a little after one p.m. —well, first we went by the home shortly after one p.m., when we seen her car in the drive; we went down the street, parked down the street, made observation until approximately one-thirty; no one had left; at one-thirty that date we went to the brick home, two floors, two families, one on each floor; we attempted to gain entrance, rang the side door bell, when Mrs. Mapp put her head out the window and asked what we wanted; we said we wanted to search the house, that we had information there was evidence in there [fol. 34] which we desired. At that time she said she wouldn't let us in, but would make a phone call; she left and came back and said she spoke to her attorney and her attorney told her not to let us in. At that time we left the scene and I called Mr. Cooney and told him we were unable to gain entrance. He said to remain on the scene and he will talk to her; he did speak to her on the phone and asked her to open the door.

Mr. Kearns: Object.

The Court: Sustained.

Mrs. Mahon: Don't relate the conversation.

A. (continuing) Close to four p.m. that afternoon Lieutenant White arrived on the scene with a search warrant. When we told her we had a search warrant she opened the door. Before that she said she wouldn't; at that time we did pry the screen door to gain entrance to the building itself. We went upstairs, myself and Lieutenant White; Inspector Barrett had arrived on the scene. She demanded to see the warrant; that is when she grabbed it out of his hand and concealed it on her person. We recovered the warrant, and she was quite belligerent at the particular time. So I told her we were going to search her apartment on the second floor. Patrolman Dever came upstairs briefly, and he went down to search the basement; he come from outside where he had remained and come upstairs with me. Patrol- [fol. 35] man Haney, a uniformed policeman who was on

the scene, and myself, searched Mrs. Mapp's bedroom. There are two bedrooms in the rear, hers is on the right. At that time she remained seated on the bed, remained in the bedroom while I was searching the bedroom.

Q. She was present?

A. She was in my presence during the complete search of the bedroom. It was at that time I was searching the chest of drawers and found four photographs, which have been entered in as evidence; and in the chest of drawers I found a 25 caliber Colt automatic gun.

Q. Where did you find that?

A. It was in the chest of drawers which I had searched. I found a lot of other stuff, tape recorders and such, confiscated that outfit that was in the chest of drawers there.

Q. In her bedroom?

A. In her bedroom. I was in that bedroom when patrolman Haney found the four books which have been introduced as evidence, in the dresser that he was searching. As soon as he had found them he showed me what he had found.

Mr. Kearns: I ask at this time the testimony patrolman Haney found these be stricken from the record because it is hearsay. He said the police officer showed them to him and told him where he had found them.

[fol. 36] The Court: Were you in the room at that time?

The Witness: I was in the room at that time, yes.

The Court: Did you observe what he was doing?

The Witness: I wasn't watching him completely all the time, no. He had them in his hand and said, "Look what I found."

The Court: The testimony may stand; his conclusion as to the finding will be stricken, but the observation may stand.

Mr. Kearns: He just said patrolman Haney told him he had found it, "Look what I found."

The Court: He may testify as to what took place at that time.

Q. Was the defendant present while this conversation went on between you?

A. Yes, she was.

Q. What size bedroom was this, officer?

A. It was a normal size bedroom; I'll say probably twelve by twelve, perhaps eleven by twelve; it wasn't too large; it contained a bed, chest of drawers and the dresser, and there is a closet for this particular bedroom.

The Court: We will have to stop here for lunch. So we will adjourn for lunch, ladies and gentlemen. I charge you while you are absent from the courtroom not to have [fol. 37] any conversation about this matter with anyone, and above all draw no conclusions in your own minds until you have heard the whole case and received the evidence and the charge of the court. Have no contacts of any sort; and permit no one to talk to you, and you are not to contact them. You will return from lunch and be ready to proceed at one-thirty. You may leave the courtroom.

Thereupon the court adjourned until 1:30 p.m.

Trial resumed, pursuant to adjournment, at one-thirty p.m.

Thereupon the witness, CARL DELAU, resumed the witness stand for further direct examination, and was examined and testified as follows:

Direct examination.

By Mrs. Mahon:

Q. Officer, I believe you testified you found a gun in that bedroom?

A. Yes, I did.

Q. Where was that?

A. That was in the one dresser I was searching where I found four pictures.

[fol. 38] Q. Did you have any conversation with this defendant concerning that gun?

A. I asked her who it belonged to; she just said it was in there, didn't say to who it belonged.

Q. You did observe that suitcase that was in the bedroom?

A. Yes, I had.

Q. And will you state whether or not it was a man's or woman's suitcase?

A. It appeared to me to be—

Mr. Kearns: I object.
The Court: Sustained.

Q. Officer, did you have any conversation with the defendant concerning that suitcase?

A. Yes, in company with patrolman Haney.

Q. And what did she say about it?

A. She said it was her suitcase at that time. This was on the premises in the bedroom.

Q. Did you make any further examination of the clothes closet in that suite?

A. In the both bedrooms I did.

Q. What did you find?

A. The bedroom where we found the confiscated evidence had nothing but feminine wearing apparel and other clothing, and women's personal things, adult woman, grownup [fol. 39] clothing; and there was no men's clothing at all in that particular bedroom. The second bedroom contained children's clothing; and we questioned the defendant, and she said that was her daughter's bedroom, and we found nothing in there but clothing for a young girl.

Q. Did you search any other rooms in that suite?

A. I searched the entire second floor.

Q. You did?

A. Yes, I did.

Q. What did you find, if anything?

A. Other than in the one bedroom, I searched that bedroom, searched the daughter's bedroom, searched the kitchen, the living room, with small dinette in the rear of it. We found nothing else other than just some policy books, blank policy books.

Q. Where did you find them?

Mr. Kearns: May I object, if the court please?
The Court: Does that have any bearing on the issue?
Mrs. Mahon: Just to show—
The Court: I will sustain it.

Q. Officer, did you search the basement of that home?

Mr. Kearns: Object to leading the witness. Let him tell. [fol. 40] The Court: Well, he may tell. Have you told where you did search?

A. I searched the basement also.

The Court: That may stand.

Q. Did any other police officers besides patrolman Haney and your partner Dever, help you in this search that you made?

A. The other policemen were on the premises, but they did not assist in the search at all.

Q. They didn't?

A. No.

Q. Did you find anything in the basement?

A. Yes, I did.

Q. What did you find?

A. I will qualify that. My partner found a foot locker, quite a large foot locker, and it contained policy paraphernalia in the foot locker.

Q. That was in the basement?

A. Yes.

Q. Anything else in the basement?

A. No, other than the usual things found in the basement, that was the only thing which we were interested in.

Q. Officer, did you have any conversation with this defendant concerning what you found in her bedroom?

A. I had a conversation with her, yes.

[fol. 41] Q. What was the conversation?

A. In the bedroom itself, when we found those items she wouldn't say anything as to what they were doing there, what the confiscated evidence was doing in her bedroom, other than making the only explanation which I overheard her say to patrolman Haney he would be excited to see them, she wouldn't comment on those things. After we brought her down to Central Station we questioned her again, and it was there she said those books were left behind by Morris Jones, who had lived with her before that and who had roomed at her home on Milverton Road.

Q. Did you have any further conversation with her at any later time as to those books?

A. No, other than in the station and when she gave a statement the following day, we had no conversation with her, and she said those books were left behind by this roomer she had.

Q. Officer, I am showing you what has been identified as State's Exhibit 10. Will you tell us if you recognize that?

A. Yes, I do.

Q. Will you explain where you saw that before?

A. This photograph was found in the chest of drawers by myself, in the bedroom of Mrs. Mapp at the residence at Milverton on May 23rd.

Q. And that was found by you?

[fol. 42] A. That was found by myself.

Q. Showing you State's Exhibit 11, will you tell us what you know about that?

A. This is another photograph which I found in the bedroom of Mrs. Mapp, at the residence on Milverton Road.

Q. Showing you State's Exhibit 12, will you explain that exhibit?

A. This is another photograph which I found, one of the four, in the drawer in Mrs. Mapp's bedroom.

Q. Showing you State's Exhibit 13, will you explain that one?

A. This is one of the four photographs I found in Mrs. Mapp's bedroom at Milverton Road, May 23rd.

Mrs. Mahon: That's all.

Cross examination of Carl Delau.

By Mr. Kearns:

Q. Sergeant Delau, you went out to the residence of Mrs. Mapp with whom?

A. Patrolman Haney and patrolman Dever.

Q. You say that you have known Mrs. Mapp for some time, is that correct?

A. I probably have known her for four or five years.

Q. And you have known that her name is Dollree Mapp, isn't that right?

A. One of her names; also Dollree and Dolly.

Q. You had her charged in this case as Dolly?

[fol. 43] A. She is also known as Dolly.

Q. But you did know that her right name was Dollree Mapp?

A. I did not know what her right name was.

Q. Well, you knew her name was Bivens at one time?

A. Yes, I did.

Q. And that is by reason of the fact that she was the wife of the prize fighter Bivens, is that correct?

A. That is correct.

Q. Now, after you went to this home which, by the way, is a private home in the city of Cleveland, isn't it?

A. Yes, it is.

Q. And after you called Mrs. Mapp's attention to the fact that you wanted to go in, she told you through the window she would call her lawyer and see if it is okay, is that correct?

A. That is correct.

Q. And after a little time passed she then came down to open the door for you, didn't she?

A. No, she did not.

Q. Well, as a matter of fact she told you then that she had talked to her lawyer, and asked you if you had a search warrant?

A. Yes, she did.

Q. And you said no, but we can get one?

A. That is correct.

[fol. 44] Q. And then she told you that you better get a search warrant, then you could go into her house?

A. Correct.

Q. And it was then that you called Lieutenant White and told him you were having trouble getting in, and she insists on a search warrant?

A. I didn't call White; I called Lieutenant Cooney, my boss.

Q. Then sometime later when you and the other two police officers were on the scene, someone came out with a search warrant, didn't they?

A. That is correct.

Q. And who was it?

A. That was Lieutenant White.

Q. Lieutenant White came with a search warrant?

A. Yes.

Q. By that time Mr. Walter Green, of my office, was also there, wasn't he?

A. He arrived a few minutes after that.

Q. How many police officers all together were there beside the three of you at the time that you entered this home?

A. On the scene there were seven.

Q. All together?

A. Yes.

Q. Some of them were in uniform, weren't they?

[fol. 45] A. Three were in uniform.

Q. And was there a captain there too?

A. No, there wasn't.

Q. Just the lieutenant?

A. Two lieutenants.

Q. Who was the other lieutenant?

A. Lieutenant Halleron, fourth district. He had that particular area there.

Q. Was he in uniform?

A. Yes.

Q. And Lieutenant White, was he in uniform?

A. In civilian dress.

Q. Then there was an inspector there too?

A. Yes.

Q. Was he in uniform?

A. Civilian dress.

Q. And there were only three police officers in uniform?

A. I will have to retract that. I think two, Lieutenant Halleron and a patrolman

Q. Was this the patrolman from that particular district, the zone car, or something?

A. I believe he was the patrolman of that zone where the house is.

Q. Think back. Wasn't there four police officers in uniform?

A. I am quite sure there were only two.

[fol. 46] Q. Only two?

A. Yes.

Q. Who remained outside to keep others from going in?

A. The only person I told to remain outside—and I don't think it was for the purpose of keeping others out, but I told Haney t remain outside to make sure nobody threw anything out the window.

Q. Was there anyone else outside in uniform?

A. The other patrolman.

Q. As a matter of fact, wasn't there a lieutenant outside?

A. I don't know. He doesn't work for me and I don't work for him.

Q. I am just asking what you know and what you saw.

A. Possibly he could have been outside.

Q. Isn't it a fact it was the lieutenant in uniform that refused Mr. Green the right to go into the premises, to your knowledge?

Mrs. Mahon: I object.

A. I do not know.

Q. You don't know that?

A. I don't.

Q. But you do know Mr. Green wasn't permitted to enter the premises while you folks were making the search?

A. I do not know that either.

Q. Well do you or don't you know whether he did enter [fol. 47] the premises at all?

A. I did not see him inside with us.

Q. How many officers did you see inside?

A. The seven I mentioned, and eventually all were inside.

Q. And during all that period of time Mr. Green was not inside, to your knowledge?

A. Not to my knowledge.

Q. Well, when you left the premises wasn't he still there?

A. I don't know where he was; I wasn't interested in Mr. Green.

Q. Yes, but you didn't see him?

A. I did not.

Q. Now you say that the other officers were there, but no one searched except you and your two men?

A. To my knowledge-I told patrolman Haney to search in the bedroom with me; patrolman Dever searched the basement. The other officers with him I did not see them searching.

Q. You are in the investigation department of the Cleveland Police Department; you were there for a specific purpose; can't you tell this jury whether the other officers that entered the place, as you say, made any searches at all?

A. I did not see them search.

Q. Whether you saw them or not, weren't there reports made to your department as the investigation department?

Mrs. Mahon: Objection.

[fol. 48] Q. By the other officers, to your knowledge?

The Court: He may answer.

A. The other officers played no part at all in the searching of the building. It was our investigation, they were there, but they did not assist me, and I have no knowledge of them searching.

Q. And if they did search you don't know anything about it?

A. They may have and I don't know about it; that could be so.

Q. But to your knowledge, at one time all of the officers were inside of that house?

A. Yes, they were.

Q. And when you talked to the defendant she did tell you that these things that you were showing her were left behind by the man that roomed there, Morris Jones?

A. Yes, she did tell me that.

Q. And all this happened in July of 1957?

Mrs. Mahon: Objection.

The Court: Sustained.

Q. Is this true, that your search was made and these things introduced in evidence was on the 23rd of July, 1957?

Mrs. Mahon: You have it wrong, the date.

Mr. Kearns: Of May. I beg your pardon.

Q. On May 23rd of 1957?

A. That is correct.

[fol. 49] Q. Did you give any one of your police officers instructions to keep Mr. Green out of the premises while you were searching?

A. I did not.

Q. Do you know anyone else who did give such orders, the inspector or the lieutenants?

A. I did not hear anyone pass out instructions.

Q. Whether you heard it or not, do you know whether any of them did?

A. I do not know.

Q. But in the basement of this residence you did find a large foot locker?

A. Patrolman Dever found it and called it to my attention; that is correct.

Q. Do you know how long before he found it that your attention was called to it?

The Court: What's that?

Q. How long before your attention was called to it had he found it?

A. To my knowledge it was a matter of a few minutes. He came up and said, "Sergeant, I want to show you what I found down in the basement." And I went down in the basement with him.

Q. And these things were confiscated by your department and taken to headquarters?

A. Yes, they were.

[fol. 50] Q. And that was a large foot locker, is that right?

A. That is correct.

Q. Have any name on it, any identification on it?

A. No, there was no name on it.

Q. Well, was there any material in it that you could identify as belonging to Morris Jones?

A. There was not.

Mr. Kearns: I think that is all, your honor.

The Court: Anything else?

* * * * * * *

[fol. 53] Defense

Whereupon the defendant, to maintain the issues on her part to be maintained, called as a witness, WALTER GREEN, who, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kearns:

Q. Will you tell the court and jury your full name?

A. Walter Green.

Q. And your address?

A. 4394 Silsby Road, University Heights.

Q. What is your profession?

A. I am an attorney.

Q. Where is your law office?

A. 1101 Hippodrome Building.

Q. And who are you associated with?

A. With yourself and my father.

Q. On or about the 23rd day of May, 1957, do you recall a telephone call that you had with Mrs. Dollree Mapp?

A. Yes, I do.

Q. And how long have you known Mrs. Dollree Mapp?

A. I estimate it a couple of years.

Q. During that period of time have you spoken to her quite frequently?

[fol. 54] A. Many times.

Q. Have you spoken to her on the telephone?

A. Many times.

Q. And are we now handling a civil lawsuit for her?

A. Yes, we are.

Q. And have we been handling that civil lawsuit for over two and a half years?

A. Well, as long as I have known her we have been handling this matter for her.

Q. And do you know that she was the person on the telephone that you talked to?

A. She so identified herself, and I recognized her voice.

Q. What did she say to you?

A. The exact words I can't repeat, but it was to the effect that the police had her house surrounded, and they wanted to gain admission, and should she let them in.

Q. What advice did you give her?

A. I said, "If they can produce a warrant, and show you that warrant, let you read it to see it is in proper order, then let them in."

Q. Did you hear any more from her on that day?

A. Well, there were two, possibly three telephone calls on that particular date from Mrs. Mapp.

Q. To you?

A. To me. Well, originally she called you; I believe you [fol. 55] were in court at the time when I took the call.

Q. Now what did you do after the telephone conversations, if anything, pertaining to her residence?

A. Well, eventually I went out to the residence at her request.

Q. And will you describe to his honor, Judge Lybarger and this jury what you saw there with reference to the action and activity?

A. Well, Mrs. Mapp lives on Milverton—the address I don't know—140th and Milverton; as I drove up I saw several police cars and what appeared to me policemen all over the place.

Q. At this time can you give this jury some idea of how many policemen you saw, as you say, all over the place?

A. My estimate at this time would be ten to fifteen officers.

Q. And were there men in uniform?

A. Yes, there were.

Q. Can you give this jury some idea, approximately, how many men in uniform were there, to your best recollection?

A. Well, I would say half to two-thirds of the men present were in uniform.

Q. What happened from then on?

A. Well, it was difficult finding a parking place right in front of the house, and I pulled up possibly a house or two beyond hers. As I walked back a couple of officers started to walk towards me, then they turned around and walked back, and I saw Sergeant Delau, I believe, attempting to [fol. 56] kick in the door.

Q. Is this the gentleman sitting in the courtroom?

A. Yes, the second officer, and I think I—I believe I stopped and asked him what they were doing; he said they wanted to get in. I asked if they had a warrant, if they had a search warrant it wasn't necessary, just show it to Mrs. Mapp. He said he had a warrant; they refused to show it to anybody: I never did see a warrant.

Q. Go ahead and tell it to the court, what happened.

A. The sergeant tried, as I say, to kick in the door, and she wouldn't come down. Then he got a sharp instrument—I mean a metallic instrument; I don't know what it was—and broke the glass in the door and somebody reached in and

opened the door and let them in. Inspector Behr was there at the time, and had plainclothes men; I don't know how many men walked in ahead or behind. I started to walk in somewhere behind Inspector Behr, and he instructed the uniformed captain to keep me from entering the premises. As I recall now the captain opened his tunic, and I got a glimpse of a revolver that he had on his belt. I didn't go any further; I asked him to let me in several times, and several times Inspector Behr came to the door and notified me I would not be allowed to walk in the premises. I walked to the front door and the side door, and I didn't gain access to the premises.

Q. You spoke of inspector Behr. Could that have been Barrett?

[fol. 57] A. I think it was Behr, an inspector.

Q. He was an inspector of police, to your knowledge?

A. To my knowledge.

Q. And you did not gain entrance to the place at all?

A. No, sir.

Q. Give this jury some idea of approximately how long these people were in these premises—I mean the police officers—and before they left.

A. My best recollection at this time would be about an hour from the time I got there.

Q. Then what did you do?

A. As I say, I walked from door to door, yelled in, asked the inspector to let me in to observe what was going on. Either I got no answer, or if I got an answer I wasn't going to be admitted. There were policemen walking up and down, up and down. I heard some loud talking.

Q. When you speak of walking up and down, will you tell this jury walking up and down where?

A. Well, there is a front stairway—there is a stairway directly to the left of the front door as you walk in. I stood there and policemen were walking up and down to and from Mrs. Mapp's apartment, which is on the second floor; there was another lower apartment on the first floor. They would walk up and down; I assume they went into the basement; I don't know. As I say, there was a great deal of commo-

[fol. 58] tion and loud talk, and I heard Mrs. Mapp call out several times.

Q. Did you hear what she said?

A. One time she said "Take your hand out of my dress."

Q. What else do you recall? Did you get any chance to see her, see whether or not she was handcuffed?

A. No, I didn't see her until they took her out. At the time I heard this particular statement I was standing at the front door, which was somewhere on those steps; from the direction of the voice, the volume of the voice, I deduced she was somewhere on the steps.

Q. Then when they took her out will you describe whether or not she was wearing handcuffs or not?

A. I can't say, Mr. Kearns; I don't recall. I know they took her to the police car; Sergeant Delau got in the back with her.

Q. What did the other police officers do?

A. Eventually they all vacated the house; I don't know who went downtown in cars; I know they eventually went down; I believe they took a trunk out of the house; where they got it I don't know. I followed them in my car.

Q. Where did you follow them?

A. Central police station.

Q. Did you stop at Central Police station?

A. Yes. I believe I saw Mrs. Mapp there.

Q. Did you talk to her?

A. Yes, I believe I did.

[fol. 59] Q. And what did they do with her?

A. Well, she was detained in jail; I don't know what they did to her.

Q. What did you do?

A. I believe I arranged bail for her.

Mr. Kearns: You may inquire.

Cross examination of Walter Green.

By Mrs. Mahon:

Q. Mr. Green, you are an associate of Al Kearns? You are partners in the law business?

A. Yes.

Q. You have an office with him?

A. Yes ma'am.

Q. So that you are very close friends, aren't you?

A. Yes.

Q. When you went out to that house you weren't trying to prevent the police from making a lawful search, were you?

A. I wasn't trying to prevent them from doing anything; I simply wanted to observe what they were doing to Mrs. Mapp. She was terrified and asked that I come out.

Q. Just answer my questions. You are a lawyer, aren't you?

A. Yes.

Q. When you got out there you took a lot of pictures, didn't you?

A. No.

Q. You didn't take any pictures?

[fol. 60] Q. You took three of the house there?

A. The sergeant's foot against the door.

Q. Do you have that picture?

A. They didn't come out.

Q. You didn't get his foot?

A. No; it was a little camera I frequently carry; I guess in the excitement I didn't pull the film through; they didn't come out.

Q. Where were you standing when you took that picture?

A. I was standing, I would say, about two yards away from that side door, next to Mr. Haney's—

Q. What other pictures did you take?

A. I tried to take pictures of the people as they were being taken away, but I was kind of shooting from the hip, not looking through the camera; got a bunch of trees and scenes like that.

Q. You didn't get any pictures?

A. Just trees and scenes, and the double exposure of the sergeant.

Q. You are not good with a camera at all.

A. Not at that time.

Q. You were with patrolman Haney outside of the house?

A. Yes, ma'am.

Q. That is this officer here?

A. Yes, ma'am.

Q. And patrolman Haney never told you that you couldn't [fol. 61] go into that house, did he?

A. I don't know whether—I wouldn't say he didn't; I don't know; I don't recall.

Q. And he was the only officer you were talking to?

A. Oh, no.

Q. That is when you arrived at the home?

A. When I arrived at the home several of the officers started to move towards me, because I didn't know any of them at that time. As a matter of fact, it was only later that I learned their names; and, as I say, I stood there and watched the sergeant attempt to break in the door. They saw I had a camera; officer Haney said, "He's got a camera, he's got a camera." Then he threatened me.

Q. Who do you mean by "he"?

A. Officer Haney. He told me I was invading his privacy, he was going to do something about it. I explained my legal rights.

Q. Just answer my question. You say you don't recall Haney never told you to go into the house?

A. I wouldn't say.

Q. Don't you remember Haney telling you that you would have to answer to the police if you go in?

A. That I couldn't say.

Q. What officer did you ask?

A. I spoke directly to inspector Behr. As I say, the first [fol. 62] man who stopped me was a captain, uniformed captain.

Q. Now your interest in this case here is because you represent this defendant in a civil lawsuit?

A. There is no connection between the two.

Q. You testified that you have a civil lawsuit for her against a man by the name of Archie Moore?

A. I didn't specify to that at all.

Q. You didn't?

A. No.

Q. Is that civil lawsuit against Archie Moore?

Mr. Kearns: If the court please, I will object to that.

Mrs. Mahon: He brought it out.

Mr. Kearns: All I said is we know her because of a civil lawsuit.

The Court: He may answer that. It was brought out by the defense.

Q. What is that lawsuit about?

Mr. Kearns: Object.
The Court: Sustained.

Q. Dollree Mapp, this defendant, is suing Archie Moore?
A. Yes.
Q. Are you handling the case for her?
A. Mr. Kearns.
Q. Do you know who Archie Moore is?

[fol. 63] Mr. Kearns: I object. Where is that material?
The Court: Overruled; he may answer: Do you?

A. Yes, I know Archie.
Q. Who is he?

Mr. Kearns: Object.
The Court: Overruled.

A. He is a boxer.
Q. The Archie Moore known as the champion light weight boxer?

Mr. Kearns: Objection.
The Court: Objection sustained.

Q. How much are you suing for?

Mr. Kearns: Object.
The Court: Sustained.

Q. While you were out there, Mr. Green, did you observe somebody being taken away from there?
A. Yes.
Q. Do you know who it was?
A. There were two people.
Q. Do you know who they were?
A. I know, of course, Mrs. Mapp, and I later learned the other was Virgil Ogletree. I saw him the first time in the downstairs suite.
Q. On the first floor suite?
A. Yes, ma'am.

Q. And he was taken away in a patrol wagon?

[fol. 64] A. That would be my best recollection.

Q. You testified here one time while you were out there you heard her say, "Take your hand out of my dress"; is that right?

A. Something to that effect.

Q. Did you know, Mr. Green, that she had taken the search warrant away and shoved it down her bosom at that time?

A. I didn't know there was a search warrant, because I haven't seen it to this day; I asked them for it.

Q. You don't know why she said that, do you?

A. No, I haven't the slightest idea.

Q. Did you know she tussled with Lieutenant White when he tried to serve her with a search warrant?

A. I don't know Lieutenant White.

Q. You didn't know he was out there?

A. Well, I don't know; if you show him to me I will identify him.

Q. You had every opportunity to talk to this defendant when she was in the police station, didn't you?

A. If I am not mistaken, the—

Q. Please answer my question.

A. I don't think I had every opportunity. If I am not mistaken, officer Haney and another officer were in close proximity, and they permitted me to talk to her privately for a few minutes at a distance, not in a private room they have down the corridor.

[fol. 65] Q. Did you ask them for a private room?

Mr. Kearns: Object.

The Court: Overruled.

A. I don't know whether I did or didn't.

Q. You weren't prevented in any way from talking to her at the police station?

A. That wasn't your original question.

Mr. Kearns: Object to that.

The Witness: Frankly, I don't see what bearing this has.

The Court: What was the question?

(Question read by the reporter.)

The Court: Overrule the objection.

A. No.

Q. You did have a conversation with her at the police station, didn't you?

Mr. Kearns: Object.

The Court: Overruled.

A. Yes.

Mrs. Mahon: That's all.

Mr. Kearns: That's all.

(Thereupon, after duly cautioning and instructing the jury, a short recess was had.)

[fol. 66] Thereupon the defendant, further to maintain the issues on her part to be maintained, called as a witness, Dolores Clark, who, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kearns:

Q. Now, Mrs. Clark, will you please speak to the last lady on this jury, loud enough so that they will all hear you. Tell us what your full name is.

A. Dolores Clark.

Q. And where do you live?

A. 5608 Utica.

Q. Do you know Mrs. Dollree Mapp?

A. Yes.

Q. How long have you known her?

A. A long time.

Q. Can you give this jury some idea, how many years, approximately?

A. I first met her when she was married to Mr. Bivens.

Q. And that was approximately how long ago?

A. Thirteen, fourteen; thirteen years, probably; a long time.

Q. You and she have remained friends since?

A. Well, off and on, yes.

Q. Did you ever see me before today?

A. No.

Q. Did you ever see or speak to anyone in my office, or [fol. 67] connected with me in the law business before today?

A. No.

Q. Do you recall on or about the latter part of April or first part of May of 1957, whether or not you were at Dollree Mapp's house when certain things were done with reference to packing?

Mrs. Mahon: Objection. Leading question.

Mr. Kearns: I am trying to get her down to the point that we want instead of taking a lot of time.

The Court: Sustained.

Q. Do you recall being at the home where Dollree Mapp lives?

A. Yes.

Q. Where?

A. On Milverton Road.

Q. In 1957 did you visit her quite often?

A. Yes, I visited her.

Q. And do you recall at any time on or about the latter part of April or first part of May, 1957, helping her to any packing?

A. Yes.

Q. Will you tell this jury in your own language what took place at that time when you helped her pack?

A. Well, I couldn't tell you all the details because it has been so long ago.

Q. Tell us what you remember of it.

The Court: Let's get set when this was. When did this [fol. 68] happen?

A. I can't say the exact date; it has been a long time ago.

Mrs. Mahon: I am objecting to the answer.

Q. Can you tell us approximately what month?

A. Say May.

Q. Will you tell us what took place?

A. I don't know the exact date, but she called me and asked what was I doing; I said nothing; she said "How

about coming out and straightening my room." Okay. When I got out there she said she needed someone to change the room, rearrange the furniture. When I got there she proceeded to pack some things,—clothing, saying she was going to clean the room out, pack the stuff before she rearranged the furniture. She said she had had a room rented out to a man. So when I got there she started to pack the stuff, pack the stuff in the box to take to the basement.

Q. What kind of clothes were they, ladies or men's clothes?

A. Men's clothes. A lot of junk, letters shoes, just general stuff, put them in (sic)

Q. You will have to speak a little louder.

A. When ~~we got~~ the stuff up off the floor and put it in the box, started to clean out the dresser drawers, and things like that. She was looking in the drawer, and all of a sudden she had this bag, a brown paper bag; she opened it up, she said, "Look what's in here." Then when she took [fol. 69] the stuff out of the bag it was a bunch of dirty books and some pictures.". She said, "Look at what filthy stuff men read." So we laughed it off, put it in the bag and put it with the man's stuff.

Q. You put it in the bag with th man's stuff?

A. Yes.

Q. And where, if you remember, did you take this bag eventually?

A. We took the whole box of junk down in the basement.

Q. Would you be able to identify the things that she showed you, if I show them to you?

A. I wouldn't say too clearly; it was just some dirty books; it wasn't important; I didn't want to see the stuff, so I didn't pay too much attention.

Q. Handing you what has been marked for identification State's Exhibits 1, 2, 3 and 4. I will ask if you identify any of these as the things she took out of that drawer and put it in this box and carried it in the basement?

A. It was something like—it was more than this, more bags and cards and things; I didn't pay too much attention to it.

Q. Would you say this was some of it?

A. I would say it was some of it, yes.

Q. Handing you what has been marked for identification

as State's Exhibit 10, 11, 12, 13. Look at these and tell us if you have ever seen them before? (handing to witness) Did you?

A. Yes.

Q. And where did you see these?

[fol. 70] A. In the paper bag that came out of the dresser.

Q. That is the paper bag that was put in this big box and taken down to the basement?

A. Yes.

Mr. Kearns: You may inquire.

Cross examination of Dolores Clark.

By Mrs. Mahon:

Q. Did you ever help Mrs. Mapp pack or move her things around before?

A. Yes.

Q. How often have you done that?

A. Go to the house and be doing something.

Q. I am asking how often you helped Mrs. Mapp pack before, or move her furniture around?

A. This is the first time I ever helped pack stuff. The men moved and she wanted me to help her. Whenever I am at her house we make coffee, wash dishes; we usually do whatever is to be done.

Q. Do you know which bedroom she was sleeping in?

A. She was sleeping in the room, we were cleaning up this room so she could get back into her room.

Q. You didn't take this bag yourself and put it in the box?

A. I handed them back to her, put all the stuff in the big box.

Q. Those cards you just identified, you say they were [fol. 71] in the paper bag with the books?

A. Put this stuff together.

Q. Please answer the question. You say those cards were in the paper bag with the book?

A. Yes.

Q. Where did she find those?

A. In the dresser drawer.

Q. In the dresser drawer?

A. Yes.

Q. And you say both you and she took the books and the cards and put them in a box?

A. Put them back in the bag, then put them in the box.

Q. And then took them down to the basement with a whole lot of more stuff?

A. It was all men's stuff.

Q. Did you know, Mrs. Clark, the police found those books in her dresser drawer on May 23rd of last year?

Mr. Kearns: Object.

The Court: Objection sustained as to the form of the question.

Q. Can you tell me what was in that room when you were in there packing?

A. Yes.

Q. What was in there? I mean by way of furniture?

A. It was a large bed, a great, huge dresser, a chest.

[fol. 72] Q. Was there a suitcase in the room?

A. I didn't see a suitcase.

Q. And you can't tell us what date you were over there, can you?

A. No, I can't remember that long ago.

Q. You can remember the bags but you can't remember the date; is that right?

A. I remember the bag because she asked me to help her clean up and take up the stuff; I don't know what day of the week it was; all I know I was there.

Q. You say you can't remember the date because it was long ago, is that right?

A. Yes.

Q. You don't know, as a matter of fact, whether it was in April or May, or what month in '57, is that right?

A. It was near the end of April or first of May; still kind of cold out.

Q. You remember that, don't you?

A. Yes.

Q. And you remember seeing those bags, don't you?

A. Yes.

Q. And you saw those pictures too, didn't you?

A. Yes.

Q. Don't shake your head; answer.

A. Yes.

Q. What else did you take down to the basement?

[fol. 73] A. A lot of stuff—boots, hats, papers, shavings and stuff; everything out of the drawers, off the floor, got in the box; everything in this box, then taken to the basement. Then we straightened it up.

Q. You say there were some men's clothes too?

A. It was all men's clothes, everything we put in the box.

Q. Were there some men's clothes?

A. I suppose you would call hats and shoes men's clothes.

Q. In other words, the man who lived in that room didn't take his clothes with him?

A. I don't know what he took with him, but he left quite a bit there.

Q. He left some clothes, is that right?

A. Yes.

Q. Well, let's get specific on this; just what besides those bags and cards did you take down to that basement?

A. Some boots—shoes.

Q. Men's shoes?

A. Yes; and a hat, some shaving stuff; just a whole lot of things, men's things. I remember the books, she showed it to me, and I didn't like it at all. We laughed about it; I said "Don't show it; put it in the bag." And when we finished we took it all to the basement.

Q. Were there any women's clothes in that room?

A. No, there was nothing in it but these things a man [fol. 74] left. We were cleaning the room out so she might move back into the room.

Mrs. Mahon: That's all.

Mr. Kearns: That's all.

Thereupon the defendant, Dollrée Mapp, further to maintain the issues on her part to be maintained, offered herself as a witness in her own behalf, and, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Kearns:

Q. Please speak direct to the jury in answering all questions. Give us your full name, please.

A. Dollree Mapp.

The Court: Spell the first name.

The Witness: D-o-l-l-r-e-e.

The Court: I think I will therefore change the form to the actual fact of her name.

Mrs. Mahon: We will amend the indictment.

The Court: Yes. All right.

Mr. Kearns: No objection.

Q. Have you at any time used the name Dolly, or to your knowledge have you been called Dolly by anyone?

[fol. 75] A. Well, I am called Dolly.

Q. By friends?

A. My friends, yes.

Q. But your real name is Dollree now?

A. Yes.

Q. You are now single?

A. That is correct.

Q. And you are the mother of a daughter?

A. That's correct.

Q. And what is her name?

A. Barbara Bivens.

Q. And how old is she?

A. Fifteen.

Q. Where does she live?

A. With me.

Q. And why is her name Barbara Bivens?

A. I was at one time married to Jimmy Bivens. I am now divorced.

Q. Is he the father of Barbara?

A. That is correct.

Q. Did you at any time go by any other name than Bivens or Mapp?

A. Never.

Q. Where do you live?

A. 14705 Milverton Road.

Q. Will you describe the living quarters, as to the type of house?

A. It is a two-family brick, with front and side entrance [fol. 76] and full basement.

Q. It had a full basement?

A. It has a full basement, yes.

Q. Now, on or about the 23rd day of May, 1957, were you at home?

A. Yes.

Q. Did anything unusual happen?

A. Yes.

Q. Will you tell this jury, please, what happened?

A. At one-thirty someone rang the door bell, and I looked out upstairs, and it was Sergeant Delau, Haney and Dever, and I asked them what they wanted; they said they wanted to come in; I asked for what; they said they wanted to question me about something. I still insisted what he wanted to question me for. He said, "I'll tell you when we come upstairs." And I told them I wouldn't let them in, and they insisted that I should open the door. I told them I would call my attorney, if he tells me to let them in, I would. At that time I called for you, and you were in court, and Mr. Green advised me not to let them in without a search warrant. I went back to the window and told Sergeant Delau what Mr. Green had told me.

Q. Was there anything else said about this search warrant?

A. Sergeant Delau said something like this, "Well, we'll get in."

Q. I mean Mr. Green; did he say anything else to you?

A. No. He told me to make sure that it was a search warrant, and they should let me see it and read it, and then [fol. 77] I should let them in.

Q. Then you advised Sergeant Delau of that fact, what your attorney said?

A. Yes. I told him my attorney said get a warrant, and he said he would have his boss to call me, which he did—Lieutenant Cooney.

Q. Who was his boss?

A. Lieutenant Cooney.

Q. And you talked to the Lieutenant?

A. Yes.

Q. And what did you say to him?

A. I told him the same thing. I told Sergeant Delau—I wouldn't let them in without a warrant.

Q. Then what?

A. Well, I hung up on him, and I called Mr. Green back; I was still trying to locate you; Mr. Green told me not to let them in unless they produced a search warrant, and they had to give the warrant to me to let me read it, and I refused to open the door.

Q. You told them that?

A. Yes. They went across the street, and I could see Sergeant Delau standing in the neighbor's yard. It went on for hours; when I say hours, they were there shortly after one. About four-thirty they started—police started arriv- [fol. 78] ing in cars. I think Mr. Green got there around the same time; and he called to me and asked me if I was going to open the door. I said "Yes, I'll come down. I want to see the search warrant."

Q. Who was it that called to you?

A. I don't know; one of them. At that time I talked to Mr. Green out of the window, and he—he was outside at the back door. They were all at the side door, and they were still coming. At that time I went downstairs to the front door; without opening I called through the door if I could see the search warrant. I was standing on the landing when Sergeant Delau came in; he was the first one in there.

Q. This gentleman? (indicating)

A. Yes. The back door was broken.

Q. Tell us about the breaking.

A. When they came in I said, "Inspector, I want to see the search warrant." And I was standing on the top landing of the stairs, and I didn't know who the inspector was when he was in plain clothes. He said, "Here is the search warrant." He held it back from me, and I remember Mr. Green told me I should see it and read it, and I told him I wanted to see it. He said, "You can't see it." At that I reached over, took the search warrant from his hand and put it down in my bosom.

Q. Was that after the door was broken in?

A. That is correct, and they were inside.

[fol. 79] Q. Give this jury some idea how many police officers, plain clothes and uniformed were there.

A. There were at least a dozen, some plain clothes, some uniform, also the paddy wagon.

Q. Then what?

A. When I grabbed the search warrant off him and put it down in my bosom, one of them said "What are we going to do now?" The one that grabbed me said "I'm going down after it." I said, "No, you are not." He went down anyway.

Q. What did you do that for?

A. Because Mr. Green told me I should read it, and I wanted to read it to make sure it was a search warrant.

Q. Then what happened?

A. He grabbed me, twisted my hand, some lieutenant behind me, and it was hurting. I yelled, I pleaded with him to turn me loose. At this time they were all going upstairs and some downstairs. He asked for handcuffs, I believe, from one of the men in uniform, and he put the handcuffs on me, then later he changed it to a man with uniform.

Q. You mean he handcuffed you to himself at first?

A. I was handcuffed to him at first; that was the one I grabbed the warrant from.

Q. Then he took the handcuff off himself and handcuffed you to a uniformed man?

A. Yes.

[fol. 80] Q. Then what happened?

A. One said to the other, "They are all in the house." He said, "Take her upstairs." I was led upstairs handcuffed to this policeman.

Q. You were led upstairs in the apartment that you occupied is that right?

A. Yes.

Q. And who came in there with you?

A. When I got upstairs Sergeant Delau was in my bedroom, and there was someone else searching my living room; they were all over the place.

Q. Well, was Haney searching?

A. I didn't see Haney at that time; I did not see him; I saw him later.

Q. You say they were all over the place searching. Who do you mean?

A. There were others; they were not the only ones there; there were eight or ten others besides Dever, Haney and Delau.

Q. And they were searching the entire premises?

A. Yes, that is correct.

Q. Men in uniform and without uniform?

A. That is correct.

Q. Now, tell what happened then?

A. Well, naturally, being handcuffed, he pulled me into the bedroom and I sat on the bed. This policeman that I [fol. 81] was handcuffed to stood over to me; Sergeant Delau was going in the drawers. About that time Haney walked in and asked me—he had this brown bag, and asked me—

Q. Walked in from where?

A. I don't know where he came from, but he walked into my bedroom door, and he said, "Does this belong to you?" I asked him not to look at it, it might embarrass him. He asked me again if it belonged to me. I said "no." He said, "Oh, yes, that's the kind of trash you read."

Q. Had you seen these things before?

A. Yes, they were in my bedroom, that I had rented out to this fellow.

Q. What was his name?

A. Morris Jones.

Q. What did you do with them?

A. Well, when he left he didn't move, he went to New York on vacation, and he didn't come back; when I found out why he didn't come back—he had paid up for the month—I was going to clean the room out, take the room for myself, because I was sharing the room with my daughter.

Q. Did you have anyone at all to help you clean the room out?

A. Well, I called Dolores and if she wasn't busy I would pick her up and have her come over to help me. I was going to take my daughter's room and change the furniture.

Q. Is Dolores the girl that just testified before you did? [fol. 82] A. Yes.

Q. Handing you what have been marked for identification State's Exhibits 1, 2, 3 and 4, I want to ask you if you identify these books?

A. Yes.

Q. Where did you first see them?

A. I first saw them when I was in his room during his absence.

Q. When you speak of "him" tell the jury to whom you are referring?

A. Yes, I had rented my room out to this fellow.

Q. Do you know his name?

A. Morris Jones. He was leaving there, he was going to open a cosmetologist school on Cedar. He was there about a month before he moved. Now I meant during his absence when in the school I went to his room, and that was my first knowledge of the books. When he went to New York and didn't come back is when I packed his things, I packed all of the things in this box.

Q. Are these Exhibits 1, 2, 3 and 4 the books that you took out of the room that he occupied and packed with his stuff?

A. Yes.

Q. What did you do with them?

A. I put them all in this box and I took them downstairs, with the help of Dolores, and put them in the corner of the basement.

[fol. 83] Q. Now, handing you what have been marked for identification as State's Exhibits 10, 11, 12 and 13, please look at them and tell us where you saw those?

A. With the books in his room.

Q. Do these State's Exhibits 1, 2, 3 and 4, and Exhibits 10, 11, 12 and 13, belong to you?

A. No.

Q. Did you ever own them?

A. No.

Q. Did you ever have possession of them?

A. No.

Q. They were things taken out of the drawer of Morris Jones', is that correct?

A. That is correct.

Q. Now I will hand you what have been marked for identification State's Exhibits 8 and 9. Exhibit 8 is what?

A. That is me, and Mr. Keeley, a real estate man, and Mrs. Lena Derry.

Q. These pictures were taken where?

A. Chatterbox Musical bar and grill.

Q. And State's Exhibit 9? (handing to witness)

A. The same.

Q. Where did you keep these State's Exhibits 8 and 9?

A. Those were in my desk in the living room.

[fol. 84] Q. And at the time the police officers made the search of your premises, where were State's Exhibits 8 and 9?

A. They were on the desk in the living room, because they had just been made a couple of years before.

Q. Handing you what has been marked for identification State's Exhibit 6, will you tell us what that is?

A. It is a diet; that is my diet.

Q. And where did you get that?

A. From the doctor.

Q. And where was that at the time these police officers made this search?

A. That is always kept in my kitchen.

Mrs. Mahon: Objection.

Q. Where was it that night or that day? Where was it that day that the search was made?

A. I was using this diet; it had to be in the kitchen.

Q. Handing you what is marked for identification State's Exhibit 7, will you tell this jury what that is?

A. This is a chattel mortgage on carpeting that I purchased quite some time ago; this was kept in papers, important papers I had in my daughter's bedroom, top drawer, with other papers.

Q. At the time the search was made where was it?

A. It was with the other papers in my daughter's bedroom I was sharing with her.

[fol. 85] Q. Were any of these exhibits, 8 and 9, 6 and 7, in a suitcase in your room?

A. No; not at any time.

Q. Were they in any of the drawers in your room?

A. No.

Q. Handing you what has been marked for identification State's Exhibit 5, please look at it and tell us if you ever saw that before?

A. Yes, I have.

Q. And where did you see it?

A. It was in the drawer of the room that Morris occupied.

Q. And what, if anything, did you do with it when you cleaned out Morris Jones' room?

A. I used my suitcase and packed some of his things away and put them under the bed, and this is one of the things that was in the suitcase that belonged to me.

Q. You say Morris Jones had paid a month's rent?

A. That is correct.

Q. And had his rental run out at the time the police officers came in and made the search?

A. No, it would have been out June 1st.

Q. And you expected him to come back for his things?

A. I knew he wasn't coming back, that's why I was packing them.

Q. Was there anything else belonging to Morris Jones that you had packed in this suitcase?

[fol. 86] A. Yes, there was a gun, and there was a shirt, silk shirt, there were ties; they were small items; there were socks.

Q. This State's Exhibit 5, did this ever belong to you?

A. Not at any time.

Q. Was it filed in your personal possessions as yours?

A. Absolutely not.

Q. Now there was some evidence here of a 25 caliber gun. At the time the police officers made the search of your premises, where was that gun kept?

A. Well, I had packed the gun along with that sketch you just gave me, and other things, in my suitcase and put it under the bed.

Q. With the other things belonging to Morris Jones?

A. That is correct.

Q. Did you know at that time whether Morris Jones would come back, or not?

A. I knew he wouldn't come back; I had talked to his mother long distance.

Q. And was there anything else with this gun, that you haven't yet described, in this suitcase?

A. Well, just his effects; there were letters, there was a cosmetology book; there were school papers.

Q. There was what?

A. School papers.

[fol. 87] Q. Was he studying cosmetology?

A. That is correct.

Mrs. Mahon: I haven't seen that at all.

Mr. Kearns: I am going to show it to you. (handing to prosecutor.) Mark these.

(Thereupon book was marked Defendant's Exhibit A, and papers marked Defendant's Exhibits B and C, respectively, for identification.)

Q. Handing you what has been marked for identification as Defendant's Exhibit A, I want to ask you whether you ever saw this before?

A. Yes, I did.

Q. And where did you see it?

A. It was in the drawer and I put it in the suitcase along with Morris' other things.

Q. When you were in this room and officer Haney or Sergeant Delau searched this room, do you know, or did you see where they found that book?

A. Yes, they found it in the suitcase because I was sitting on the bed, and he put the suitcase on the bed with me, and when I told him it belonged to Morris Jones, he said he didn't need it.

Q. He said what?

A. He didn't need it.

Q. Who said that?

A. Haney said it.

[fol. 88] Q. Handing you what has been marked for identification as Defendant's Exhibits B and C, have you ever seen them before?

A. Yes.

Q. And where?

A. This is some of his school work; Morris Jones' school work.

Q. And where were they in connection with this book of Cosmetology?

A. They were in the suitcase also.

Q. They were in the suitcase?

A. Yes.

Q. But where were they taken from, if you know?

A. From the suitcase.

Q. By whom?

A. By Haney.

Q. Now we spoke of State's Exhibits 1, 2, 3 and 4, which are these books. Where were these books on the day of this search by the police officers?

A. They were in the basement in a box, along with other things that belonged to Morris Jones.

Q. And who had put them there?

A. I had put them there myself.

Q. And where were State's Exhibits 10, 11, 12 and 13 on the day of this search?

A. They were also there in the basement, in the same bag, as a matter of fact.

[fol. 89] Q. And is that the bag that officer Haney walked into the bedroom with that you spoke of?

A. Yes.

Q. And these things were in that bag?

A. Yes.

Q. And prior to that date, to your knowledge, they were in the basement, is that right?

A. They were in the basement.

Q. And when you were taken down to Central Police Station and questioned by Sergeant Delau, you told him that these things belonged to Morris Jones?

A. That is correct.

Q. Were you ever given an opportunity to read that search warrant?

A. I never had—I never read one word on there.

Q. Now, there was some testimony here about crayons, child's crayons. Where were they and where did the police officers find them?

A. Well, Sergeant Delau went in my daughter's room; I did not go with him; but the crayons, they were on my daughter's—she has a little desk with crayons and drawing board on the desk, and they were there.

Q. Did they show you these crayons at any time and ask you about them?

A. Yes.

[fol. 90] Q. Who did that?

A. Sergeant Delau showed them to me in the police station.

Q. And what did he say about that?

A. He asked me if they belonged to my daughter.

Q. And what did you say?

A. Yes, they were hers.

Q. That they were hers?

A. That is correct.

Q. Did he tell you then at the police station where he found them?

A. No, he did not.

Q. I am going to ask you, finally, whether State's Exhibit 5, which is this drawing, was ever in your possession except as you have described?

A. Not at any time.

Q. Did it ever belong to you?

A. No.

Q. I am going to ask you whether State's Exhibits 1, 2, 3 and 4, or any of them, were ever your property?

A. Not at any time.

Q. Or did you ever have possession of them except as you have described to this jury?

A. No.

Q. I am going to ask you whether State's Exhibits 10, 11, 12 and 13 were ever your property?

[fol. 91] A. No.

Q. Did you ever have possession of them except as you have described to this jury?

A. No.

Mr. Kearns: That is all, your honor.

Cross examination of Dollree Mapp.

By Mrs. Mahon:

Q. How long did Morris Jones live at your place?

A. Off and on for about a year,—off and on.

Q. Off and on. What do you mean by off and on?

A. He was traveling back and forth to New York.

Q. Well, did he rent the rooms at intervals, monthly, or what?

A. No, it was a permanent thing.

Q. It was a permanent thing?

A. Yes.

Q. Well, his rent hadn't run out in May, had it, when you were moving his things out?

A. I knew he wouldn't be back; his mother called me long distance. He got in trouble and she called me.

Q. Didn't you testify here his rent hadn't run out?

A. It had.

Q. At the time?

A. At the time I was packing his things, no, it hadn't run out.

Q. All of these things you related—rather none of it that [fol. 92] you related here did you tell the police at the time of your arrest, did you?

A. Yes, I did tell the police.

Q. Did you tell them that these various books, pictures and everything, that you had taken them down to the basement?

A. I told them just like I am telling you now, that they didn't belong to me, and told them before they took me to the jail who they belonged to, all of them.

Q. Did you tell them you had taken them down to the basement?

A. They didn't ask me.

Q. They didn't ask you?

A. No.

Q. Did you tell them about the pictures, that you put them into a box and took them down to the basement?

A. That was the only thing they asked me; I told them no.

Q. As a matter of fact, they found these things in your bedroom, didn't they,—the books and pictures?

A. No, they did not.

Q. You say you took the pictures and the books and put them down in the basement?

A. No, the other things that belonged to Morri Jones.

Q. How come you put things in the suitcase?

A. Because I took all the things that belonged to him; he had powder, pencils, fingernail polish, everything that you use for cosmetology.

[fol. 93] Q. Well, you were packing his things in a box?

A. His mother asked me to pack his things.

Q. I didn't ask you that. You say you were taking his things down to the basement, and you put them back in your suitcase, is that right?

A. That is correct.

Q. The suitcase belonged to you?

A. That is correct.

Q. And it was a woman's suit case?

A. That is correct.

Q. And in this suitcase you had this souvenir, State's Exhibit 8, didn't you?

A. No, not in my suitcase.

Q. Where did you have it?

A. In the living room on the desk.

Q. You say that is where the police got them, not out of the suitcase?

A. I know where they got them, yes, both of those.

Q. Both of these were in the living room?

A. Yes, both of those; they were on the desk.

Q. So that these officers are lying here, is that right, when they say they got them out of your suitcase?

Mr. Kearns: Object. Just a minute, please.

Q. Well, you heard both police officers testify, rather patrolman Haney testified concerning this diet sheet of [fol. 94] yours, State's Exhibit 6, this chattel mortgage, State's Exhibit 7, this souvenir photo taken at the Chatterbox, State's Exhibits 8 and 9,—you heard patrolman Haney testify that he got these out of your suitcase in your bedroom. Is that right?

A. No.

Q. Didn't you hear him so testify?

A. Yes, I heard him say that.

Q. And you say they were found on the desk?

A. I am telling you where they were found; they were on my desk in the living room. I live there, I put them there.

Q. You were present when Haney was searching your bedroom?

A. I was present.

Q. He was present there when they were searching?

A. Yes. I was sitting on the bed.

Q. You were present when he was searching your suitcase?

A. Yes. He did not take them out of my suitcase.

Q. He didn't?

A. No, he did not.

Q. And in searching your suitcase patrolman Haney found State's Exhibit 5; you heard him so testify?

A. He is correct; he did find that there.

Q. In your suitcase?

A. In my suitcase, with the things that belonged to Morris Jones; I put them there.

[fol. 95] Q. You put them in the suitcase and the book?

A. Along with the cosmetology book.

Q. What else was in that suitcase that belonged to Morris Jones?

A. Everything in there belonged to Morris Jones.

Q. The suitcase was yours, however, wasn't it?

A. Yes.

Q. But you do say that patrolman Haney did get this out of your suitcase, State's Exhibit 5?

A. Yes; I put it there.

Q. Now you heard officer Delau testify that he found these four groups of pictures in a dresser drawer in your bedroom?

A. Yes.

Q. You heard him testify to that?

A. Yes.

Q. Is he telling the truth?

Mr. Kearns: Object, if the court please.

The Court: She may answer that.

A. So far as I am concerned he is not.

Q. Sergeant Delau is not telling the truth when he said he found them in your presence—you were present, were you?

A. Yes, I was present with two other officers.

Q. Was Sergeant Delau searching your bedroom when you were there?

A. Yes.

Q. He was?

[fol. 96] A. Yes.

Q. Where do you say they were?

A. I packed them along with the bags, put them in the cardboard box and took them with other things belonging to Jones; I put the books and the pictures together.

Q. So Sergeant Delau is mistaken when he said he found these in a dresser drawer in your bedroom?

Mr. Kearns: Object.

The Court: Objection overruled.

A. Yes.

Q. Now you heard patrolman Haney testify that he found these four books, State's Exhibits 1, 2, 3 and 4 in your bedroom in a dresser also?

A. Yes.

Q. You heard him so testify?

A. Yes, I heard that.

Q. And you say these were not in the bedroom, that they were down in the basement?

A. They were in the basement.

Q. They were in the basement?

A. Yes; he walked in the door with the bag in his hand and asked me if they belonged to me; I was sitting on the bed.

Q. You were sitting on the bed?

A. That is correct.

Q. You are telling us now that patrolman Haney found [fol. 97] these in the basement instead of, as he testified here, in a dresser in your bedroom?

A. He did not find them in my bedroom.

Q. He didn't?

A. He did not.

Q. When did Morris Jones start this beauty course that he was taking?

A. He started in the latter part of '56.

Q. The latter part of '56?

A. Yes.

Q. Where did he attend the cosmetology class?

A. Beatrice School on Cedar.

Q. How long did he attend it?

A. I would say about three or four months.

Q. You didn't turn this book over to the police at any time, did you, as belonging to Morris Jones and being in the suitcase?

A. Yes, I offered it to patrolman Haney; he said he didn't need it.

Q. This book has been in your possession all this time up until this trial?

A. No.

Q. Who did you turn it over to?

A. My attorney.

Q. Mr. Green?

[fol. 98] A. Yes.

Q. When did you turn this book over to him?

A. I don't remember, but it was after—it was after I was arrested.

Q. Do you know where Morris Jones is now?

A. No, I do not.

Q. Was this Jones employed?

A. I think he started at Republic Steel, because they sent a telegram there for him; I do believe he worked there a very short time.

Q. What did he do there, do you know?

A. No, I don't know.

Q. Did he at any time work at any beauty school?

A. He is a student.

Q. At this place, you own that home, don't you?

A. No, I do not own it.

Q. You are not just renting there, are you?

A. I am renting.

Q. Well, you yourself collected rent from the downstairs suite, didn't you?

A. I collected rent from the downstairs suite? Yes.

Q. For the owner?

A. For the owner.

Q. What is her name?

A. Mrs. Miller.

[fol. 99] Q. Did you pay rent to her?

A. Absolutely.

Q. How much rent?

A. Ninety dollars.

Q. Ninety dollars a month?

A. Yes.

Q. Mrs. Mapp, you heard patrolman Haney testify here that when he found those books you said to him, "Don't read them, they might excite you"; do you remember he testified that?

A. I heard him say that, yes.

Q. You said that to him, didn't you?

A. I told him not to look at them, they might embarrass him.

Q. You did say that?

A. Yes, I did say that.

Q. You were questioned about that gun that was found in the room?

A. No, I was not.

Q. You weren't?

A. No.

Q. You never told the police anything about it?

A. They might have asked; I don't say they didn't.

Q. To whom did that gun belong?

A. To Morris Jones.

Q. That was some property of his that you didn't take to the basement?

[fol. 100] A. No, it wasn't in the basement.

Q. That was where?

A. That was upstairs.

Q. Where?

A. In the suitcase.

Q. In the suitcase the gun was?

A. Yes, along with a box of cartridges; I put them there.

Q. On one of these souvenir photos, perhaps both of them, you said a man was Mr. Keeley?

A. Yes.

Q. That is State's Exhibit 9. That is Mr. Keeley with you?

A. Yes.

Q. Who is the lady?

A. Mrs. Derry.

Q. Is Keeley a boy friend of yours?

Mr. Kearns: Objection.

The Court: Objection sustained.

Q. Have you been going around with Mr. Keeley?

Mr. Kearns: Object.

The Court: Sustained.

Mrs. Mahon: On what ground?

The Court: It doesn't bear on the issue of the case.

Q. To this day has Morris Jones ever come to your home to get any of his property?

[fol. 101] A. His mother came.

Q. His mother came?

A. Yes.

Q. When?

A. Oh, it was later; I think it was October, somewhere along there; it was chilly.

Q. She came to get his property?

A. Yes.

Q. What did you turn over to her?

A. Everything that I had I gave to her.

Q. You had this book?

A. My lawyer had it.

Q. You didn't turn this over?

A. My attorney had the book.

Q. But that belonged, you say, to Morris Jones?

A. Yes, it does.

Q. Did you explain to the mother about the books and the photographs?

Mr. Kearns: Object.

A. No.

The Court: Overruled.

Q. Where did the mother come from?

A. Tennessee.

Q. Tennessee?

A. Yes.

[fol. 102] Q. How did you know you had anything belonging to Morris Jones?

Mr. Kearns: Object.

The Court: Objection sustained.

Q. What is his mother's name?

A. Mrs. Jones is all I know.

Q. Mrs. Jones?

A. Yes.

Q. Had you ever met her before?

A. Only when she came there to my house to get his things.

Mrs. Mahon: That's all.

Mr. Kearns: Just one question: This box you speak of that you had packed Morris Jones' stuff in and put in the basement, that was not the large foot locker that has been mentioned in this case?

The Witness: No, the foot locker, that is an entirely different thing.

Mr. Kearns: That's all.

Mrs. Mahon: That's all.

Mr. Kearns: Now, may it please your honor, on behalf of the defense we would like to introduce Defendant's Exhibits A, B and C, as they were identified.

Mrs. Mahon: Objection.

The Court: What is your ground of objection, Mrs. Mahon?

[fol. 103] Mrs. Mahon: She has testified here that that book belonged to him; we don't have any testimony of any Morris Jones here that is his property.

The Court: Well, they may be received.

Mr. Kearns: She also testified it was taken out of the suitcase.

The Court: They may be received, all three of them, A, B and C, may be received.

Mr. Kearns: And with that the defense rests.

The Court: Is there anything by way of rebuttal?

Mrs. Mahon: No rebuttal.

Thereupon the State rested.

Thereupon the defense rested.

Testimony closed.

* * * * * * *

[fol. 105] CHARGE OF THE COURT

LYBARGER, J.:

Ladies and gentlemen of the jury, it now becomes the duty of the court to instruct you in the law that governs this case. It likewise becomes your duty to accept the law as this court gives it to you, to adopt it as a guide for your determination of what the facts actually are in this matter, and by that means to arrive at a verdict which will be just and fair. You, ladies and gentlemen of the jury, must determine what the facts are, what is the truth in this matter. You should approach this task with an open mind, and in all fairness, having in mind your oath as jurors that you

would not be influenced by sympathy or prejudice against either the State or the accused.

At the outset the court should define for you what is meant by evidence, and how you are to weigh the testimony in this case. Throughout the course of the trial on occasion the court has ruled for or against the admission of evidence when objections were raised, either by the State or the defense. You will draw no inference of any kind from any of the rulings of the court as on questions of law; neither [fol. 106] will you because of any such rulings, or any other expression of the court, infer that the court has any opinion as to the guilt or innocence of the accused in this case. You are the exclusive judges of all the facts in this case, and the court must not and does not invade the province of the jury by reflecting upon the facts at issue in any manner whatsoever.

At the opening of the case, and presently at the close of the case, very able counsel on both sides of the trial table addressed you, first the opening statements and then closing arguments in summation. They were entitled to do so under the law, and you will keep in mind, however, that anything that was said was not to be received as evidence, but may or may not be of assistance in helping you to arrive at a conclusion in the case, depending on how you view the argument.

The indictment in this case, which the court will soon read to you, is not to be considered as evidence; it serves to inform the defendant of the charge made against her by the State; the mere fact that the defendant was indicted by the grand jury does not constitute evidence, or raise any presumption of the guilt or innocence of the accused. The [fol. 107] evidence upon which you must decide this case is what was presented to you from the witness stand, together with any exhibits which were received into evidence. You, ladies and gentlemen of the jury, are the sole and exclusive judges in this case in determining where the truth lies; it is your duty to weigh the testimony of all the witnesses and decide what faith, credit and confidence you will give to the testimony.

In passing upon the credibility of the witnesses you may consider, among other things, their manner of testifying on

the witness stand, their apparent intelligence, candor and truthfulness, or the lack of these qualities; their interest, bias or prejudice; their means of knowing and remembering the facts about which they testified, and the reasonableness or unreasonableness of what they had to say; did a witness appear to be telling a full, honest story, or to be withholding or exaggerating or understating certain facts.

It is your privilege to believe all that a witness said, or to believe none; or you may believe a part and disbelieve another part of a witness's testimony. Take all these things into consideration and give to the testimony of each witness [fol. 108] such weight and credit as in your honest judgment it deserves.

The defendant, Dollree Mapp, comes into this court for trial by reason of an indictment returned by the grand jury in essentially these words: "The grand jury do find and present that within and for, on or about the 23rd day of May, 1957, at the county aforesaid, (being Cuyahoga County, Ohio) unlawfully and knowingly had in her possession and under her control certain lewd and lascivious books, pictures and photographs, said books, pictures and photographs being so indecent and immoral in their nature that the same would be offensive to the court and improper to be placed upon the records thereof."

To this indictment the defendant has returned a plea of not guilty; by this plea the defendant puts at issue every material element of the indictment and of the offenses charged therein. The defendant denies the existence of each element which constitutes the crime charged in the indictment. The plea of not guilty entered by the defendant clothes her with the legal presumption of innocence. This presumption is not a mere matter of form, but is rather a shield which the law throws about the defendant. The presumption of innocence is accorded to the defendant from the [fol. 109] moment that protection was first cast upon her, and which remains with her throughout the trial.

The presumption of innocence is only overcome when you, the jury, find the evidence is such as to exclude every reasonable doubt of the guilt of the defendant. This plea of not guilty tendered by the defendant places upon the State of Ohio the burden of pr ing beyond a reasonable doubt

each and every element that constitutes the allegations in the indictment, and of proving beyond a reasonable doubt each and every element of the offense that is charged therein. The law of Ohio has this to say concerning the presumption of innocence: A defendant in a criminal case is presumed to be innocent until he is proved guilty of the crime charged, and in case of a reasonable doubt whether his guilt is satisfactorily shown he shall be acquitted.

This presumption of innocence places upon the State the burden of proving the guilt beyond a reasonable doubt. The law also requires that I read to you from the statute this definition; reasonable doubt is defined as follows: "It is not a mere possible doubt because everything relating to human affairs or depending upon moral evidence is open [fol. 110] to some possible or imaginary doubt. It is that state of the case which, after an entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the charge."

To doubt is to be honestly uncertain of the truth or of a fact; a reasonable doubt is a substantial doubt; it is not an unreasonable doubt; it is not a capricious doubt based merely upon conjecture, but it is a doubt based upon reason; it must be a doubt honestly uncertain and not a doubt originating in your mind from a desire to avoid the performance of a disagreeable duty; it is not a doubt created by any feeling of sympathy, passion or information not based upon the evidence in the case.

The rule of law which clothes every person accused of crime with the presumption of innocence, and casts upon the State the burden of proving him guilty beyond a reasonable doubt, is a humane provision of the law, intended to guard against the danger of an innocent person being unjustly punished; but the rule is not intended to aid a person who is in fact guilty to escape.

[fol. 111] When after a full and impartial consideration of all the evidence, the judgment of the jury is convinced to a moral certainty that the defendant is guilty as charged in the indictment, and there is no reasonable explanation of the fact proven except upon the hypothesis that the defen-

dant, in fact, committed the crime charged, then every reasonable doubt is removed and a verdict of guilty should follow.

You should examine all the evidence with an honest purpose to ascertain the truth and render your verdict accordingly, irrespective of what consequences may follow your verdict.

I come now to define for you the law that bears particularly upon this case. The Revised Code of Ohio contains this section, which I shall read for you only in part as it may apply to the charges here made, omitting those parts which have no reference, since the statute is all-inclusive and covers many subjects.

"No person shall knowingly have in his possession or under his control an obscene, lewd or lascivious book, magazine, pamphlet, paper, writing, advertisement, circular, print, picture, photograph, circular, print, picture, photo- [fol. 112] graph, or pictures and stories of immoral deeds, lust or crime."

In order to find the defendant, Dollree Mapp, guilty as charged in the indictment, the State must prove beyond a reasonable doubt each and all of the following elements, which I shall enumerate:

(1) That the crime was committed in this state and county on or about the date alleged in the indictment.

(2) That the act was done unlawfully, that is, in violation of a statute of Ohio; and that it was done knowingly, that is, voluntarily, of one's own choice, not accidentally. This signifies an act of the will, an intention to possess and have under one's control the things alleged in the indictment, which knowledge and intention must have been present at the time when the act complained of was done. The law presumes that a sane person intends the ordinary consequences of his own voluntary acts.

(3) That the defendant had in her possession and under her control the books, pictures and photographs mentioned in the indictment. "Possession" means the act or state of detaining a thing; it is the act of holding or keeping it. Now, such detention does not mean that it is necessary al-

ways to have in one's sight the thing possessed. For ex-
[fol. 113] ample, one who deposits articles in a place of concealment may still be deemed to have them in his possession. To have something under one's control is to have the present right and power to do with it as one will.

Neither possession or control necessarily means ownership. If a person possesses something it does not necessarily mean that he owns it. The test is whether or not the defendant had some degree of possession and control over the material as alleged in the indictment.

(4) That the books, pictures and photographs set forth in the indictment are obscene, lewd or lascivious. To be obscene the material must be calculated to appeal to a reader's or viewer's prurient interest, that is to say, it must have as its dominant purpose and effect erotic allurement, a calculated and effective excitement to sexual desire.

The term "lewd" as used in the law means lustful, sensual, pornographic. "Lascivious" means wanton, tending to produce voluptuous emotions. "Prurient" means inclined to or characterized by lascivious thought. The standard for judging obscenity is whether to the average person applying
[fol. 114] contemporary community standards, the dominant theme of the material, taken as a whole, appeals to prurient interest.

Ladies and gentlemen of the jury, if beyond a reasonable doubt you are convinced that the State has proved that on or about the 23rd day of May, 1957, in this county, Dollree Mapp unlawfully and knowingly had in her possession and under her control, certain lewd and lascivious books, pictures and photographs, and that the State has proved beyond a reasonable doubt all of the essential elements of the crime as I have defined them for you, then it will be your duty to return a verdict of guilty; on the other hand, if the State has not proved to you beyond a reasonable doubt any one of the elements which I have just defined for you, then it will be your duty to return a verdict of not guilty. It is for you to decide. I have charged you to pay strict attention to the evidence and the law, the evidence as given in court and the law as given to you by the judge.

You will now retire to your jury room; there you will elect one of your number as foreman, which may be either man or woman. The foreman will have no greater authority [fol. 115] than anyone else, except he will preside and see that your deliberations are regular and orderly. You will have with you in the jury room the indictment, which the court admonishes you again is not to be considered as evidence; you will have with you in the jury room the exhibits, which are to be considered as evidence. During your deliberations and until you have reached a verdict, you will be kept together, unless you are otherwise discharged by the court, or permitted to separate for a good purpose. Should you desire to address any communication to the court during your deliberations concerning this case, you will do so in writing, signed by your foreman, and deliver to Mr. O'Grady, the court bailiff, in whose charge you will be while deliberating.

In order to arrive at a verdict in this case it is necessary that all twelve of you be of one mind in agreement. So far as conviction goes, there can be no conviction until all twelve are of one mind, and if twelve of you do not so agree then there is no conviction.

You will be handed two forms of verdict; you will use the one which meets with your unanimous approval. One says, "We the jury in this case, being duly impaneled and [fol. 116] sworn, do find the defendant, Dollree Map, not guilty." The other says, "We the jury in this case, being duly impaneled and sworn, do find the defendant Dollree Mapp guilty of possession of obscene literature as charged in the indictment.

The fact that the court submits these to you and reads them to you should raise no presumption in your minds as to which one you should use; that is entirely up to you. The court charges you that in determining the question of guilt or innocence of the accused, you are not to consider for a minute anything concerning punishment. Punishment is entirely a province of the court and not the jury.

One final word, ladies and gentlemen. This case is of great importance to the State, and it is of great importance to the defendant, Dollree Mapp. You as citizens and jurors are now called on to decide the important question of the

guilt or innocence of the accused. It is essential for the welfare of society that those who are guilty of crime should be found guilty, but it is also essential that anyone that is innocent should be found innocent. So I charge you to deliberate carefully, in accordance with your oath, and to return a verdict which will respond to the facts in the case [fol. 117] as you find them to be, and the law as this court has given it to you.

The Court: Is there anything further?

Mrs. Mahon: No, your honor.

Mr. Kearns: Nothing on behalf of the defense, your honor.

* * * * * * * *

[fol. 118]

IN THE COURT OF COMMON PLEAS

STATEMENT OF PROCEEDINGS

* * * * * * * *

9-3-58 Defts mo to suppress evidence, overruled. Indictment amended to indicate Deft's correct name "Dollree," Jury imp & sworn. On trial, Progress.

Lybarger J.

* * * * * * * *

[fol. 119]

IN COURT OF COMMON PLEAS

CRIMINAL BRANCH

Cause No. 68326

[Title omitted]

MOTION FOR A NEW TRIAL—Filed September 6, 1958

Now comes the defendant by her attorney, A. L. Kearns, and moves this honorable court for an order granting her a new trial for the following reasons.

1. That the verdict of the jury and the judgment of the court was contrary to the manifest weight of the evidence and contrary to law.

2. That Sec. 2905.34 of the Revised Code of Ohio is unconstitutional.

3. That the defendant herein was denied her constitutional right to due process of law.

4. That the court erred in over-ruling the motion of the defendant duly filed before trial for suppression of the evidence.

5. That the court erred in the admission of evidence offered by the State of Ohio over the objections of the defense.

[fol. 120] 6. That the court erred in over-ruling the motion of the defendant for a directed verdict of discharge upon the resting by the state of Ohio.

7. That the court erred in over-ruling the motion for a directed verdict at the close of all of the evidence.

8. Other errors appearing on the face of the record and duly objected to by the defense.

A. L. Kearns, Attorney for the Defendant, 1101 Hippodrome Bldg., Cleveland 14, Ohio, MAin 1-3543.

[fol. 120a] [File endorsement omitted]

9/8/28

Overruled

Lybarger J.

[fol. 121] [File endorsement omitted]

IN THE COURT OF COMMON PLEAS

[Title omitted]

NOTICE OF APPEAL—Filed September 26, 1958

Now comes the defendant by her attorney, A. L. Kearns, and gives this her notice of appeal of this cause to the Eighth District Court of Appeals of Ohio, Cuyahoga County.

This appeal is on questions of law, from the Judgment of conviction and sentence on or about the 4th day of September, 1958.

Errors complained of:

1. That the verdict of the jury and the Judgment of the Court was contrary to the manifest weight of the evidence and contrary to law.
2. That Sec. 2905.34 of the Rev. Code of O., under which this defendant was indicted, tried, convicted and sentenced is unconstitutional and deprived this defendant of her constitutional Rights and guarantees.
3. That this defendant was denied her constitutional rights to "Due Process of Law".
4. That the Court erred in over-ruling the motion of the defendant for suppression of the evidence.

[fol. 122]

5. That the Court erred in the admission of evidence objected to by defendant.
6. That the Court erred and deprived defendant of her constitutional guarantees in that cruel and unusual punishment was inflicted.
7. That the Court erred in overruling the motion of the defendant for a directed verdict of not guilty and discharge upon the resting by the State of Ohio.
8. That the Court erred in overruling the motion for a directed verdict at the close of all of the evidence.

9. Other errors appearing on the face of the record and duly objected to by the defense.

NOTICE

The State of Ohio will take notice that the defendant has filed her above notice of appeal together with assignments of error.

A. L. Kearns, Attorney for Defendant, 1101 Hippodrome Bldg., Cleveland 14, Ohio, MAin 1-3543.

ACKNOWLEDGEMENT

John T. Corrigan, Prosecuting Attorney in and for Cuyahoga County, Ohio acknowledges receipt of copy of aforesaid notice this 26 day of September, 1958.

John T. Corrigan

[fol. 123] [File endorsement omitted]

IN THE COURT OF APPEALS

STATE OF OHIO, Plaintiff-Appellee,

—vs—

DOLLREE MAPP, Defendant-Appellant.

EXCERPTS FROM BRIEF OF DEFENDANT-APPELLANT AND REFERENCE TO ASSIGNMENT OF ERRORS—Filed November 14, 1958

* * * * * * *

[fol. 124] One would expect that this record would show a seizure by police in a store dedicated to profit regardless of the illegal nature of its merchandise, with window displays to lure the buyers. On the contrary the police operation was the result of other aims;—Mrs. Mapp's private home was forced, and then entry sought to be justified by claim of search warrant, never allowed to be seen, let alone

read by the defendant, shown to her attorneys, or produced in Court by the police;—at all events, there is and was never a claim that the dwelling of Mrs. Mapp was entered or the purpose of search was for the statutory purpose of R. C. 2905.35.

[fol. 125] There were from 7 to 12 police officers involved, they came according to Patrolman Haney to find some man for questioning as to a bombing, which some unknown said might be at the address. No such man ever was there. (B. of Ex. 19). There is no better way to present the situation than to quote from the Bill of Exceptions, see Pg. 74:

* * * * * * *

[fol. 126] ARGUMENT

Before we specifically point out the errors in trial, it may be of value, to give the history of the statute, and to make some observations on the case as a whole.

Until 1955-56, there was declared by the law a requirement under which no one could possibly be accused under circumstances like that at bar. We copy some portions from the old law.

> "Sec. 13035. Disposing of, exhibiting, advertising, etc., obscene literature or drugs for criminal purposes. Whoever sells, lends, gives away, exhibits, or offers to sell, lend, give away or exhibit, or publishes or offers to publish or *has in his possession for such purpose*, an obscene, lewd or lascivious book, pamphlet, paper, writing, advertisement, circular, print, picture, photograph, drawing"....

Now we have such indefinite terms, with the cruelest and most unusual of punishments, for what anyone can be convicted, no matter how innocent of purpose. We must there-[fol. 127] fore so interpret the terms of the new statute as to defeat such a consequence, or make the Law unconstitutional.

This is said in 171 Pac. (2d) 360,
v. *Oregon Liquor Control Commission*;

> "Syl. 3: The policy of the law is not to punish the innocent, and Courts must look beyond the strict or

literal sense of words in a statute to avoid an absurd or unjust result, and all laws shall receive a sensible construction."

"Syl. 4: The rule of construction according to the spirit of the law is applicable where adherence to the letter will result in absurdity or injustice".

There is no need to review every part of the statute, and show the vagueness, lack of standards in the elements, but we must believe that there is no intent in the law to condemn for acts which would be innocent under the old statute.

We cannot believe that one must deal with the property of another under circumstances like that at bar by destruction, when destruction, even of any contraband, is still a crime; and while we could find no decisons defining "possession of lewd literature", we did find decisions relating to intoxicating liquors possession which establish the principle applicable at bar, and shall give them under the proper heading to show there was not established "possession" within the meaning and intent of the statute.

See *State* v. *Donovan*, Syl. 1, 183 Pac. 127, (Though un- [fol. 128] lawfully acquired, as ivory checks for gambling, they are subject of larceny)

"Outlawed whiskey may be the subject of grand larceny, where taken from one claiming ownership, although the law would not afford any one damages for its taking or give any one relief looking to its recovery". (See full discussion therein)

See Slot machines as a subject of burglary, 90 Pac. (2d) 854. *People* v. *Walker*, Syl. 6; and 58 Pac. (2d) 472, *State* v. *Stover;* see also 95 Pac. (2d) 709, page 717, *State* v. *Mellemberger.*

Books condemned in one state have been held proper in others; and some improper for one kind of owner, are legally possessed by another. This is sufficient to show why the law does not allow destruction, or denial of the property rights of another, regardless of the object.

We now proceed to discuss the elements involved in the charge of "possession", and the errors in the charge, and the entire conviction and sentence.

Discussion

I. There was no possession or control by Dollree Mapp of the articles under the Statute.

We need not repeat the facts. The very nature of the situation, shows none of the indicia of a vicious act, such as a seller's or exhibitor's, who caters to depraved minds. She was a mother with a thirteen year old daughter. The books [fol. 129] and pictures were not her property, but of a roomer,—they were packed away, to await his disposition. The cases we shall quote, though on "possession or control" of unlawful objects, such as intoxicating liquors are clear that circumstances like that at bar, establish lack of possession and control.

See 190 N. W. 622, *People* v. *Archer*, Syl. 2:

> "Mere knowledge of accused that co-defendant, for whom she was acting as housekeeper, had liquor in the home unlawfully, would not render her guilty of having it unlawfully in her possession".

(the Court had charged—"allowed to remain there, tho not hers and she retained it in house—was guilty" —held error)

See 281 F. 131, *Presont* v. *U. S.* (U. S. Ct. of App. 6th Cir.)

> "On trial of defendants, respectively owner and tenant of a building charged under National Prohibition Act . . . maintaining a common nuisance, an instruction that, if defendants knew of the violation of the law by a subtenant and failed to report it, they might be convicted . . . held erroneous".

See also 269 Pac. 476 (Case 2) *State* v. *Flint*.

(While in jail on charge of drunkenness, moonshine found in his house—insufficient—he claimed house was broken into while absent)

Quotation page 479: "In *Tearney* v. *State*, 185 Pac. 1104, it is stated that defendant ran a restaurant and rooming house situated across the street from each other. Two

police officers found 9 pints of whiskey in room No. 9 of rooming house, in a dresser drawer, covered with heavy pieces of paper. The defendant denied any knowledge of [fol. 130] the whiskey which was found, and testified that he had run the rooming house for about a year, and that a man named White an oil field worker had occupied room No. 9 for several months. His wife and son-in-law also testified the latter fact—The Court said—"As a matter of law, the evidence is insufficient to sustain the conviction."

Cites also *State* v. *Waxman*, 93 N. J. Law 27, 107 Atl. 150;—charge that there was an illegal sale of liquor. . . . "if defendant knew or had reason to know that his employees were selling liquor, he is liable, is erroneous, as attempting to base defendant's liability upon the law of negligence and not upon criminal intent."

See also 170 Atl. (Penn.) 699, *Com.* v. *Guild.*

"Syl. 1:

"Presumably, control of property actually rented to third party, passed from owner to tenant."

"Syl. 5:

"Mere silence, even in felonies, after knowledge of crime having been committed, does not make party failing to report offense an 'accomplice' or accessory after fact."

Thus, there was no possession or control, and Dollree Mapp is not guilty of any offense.

II. The instructions of the Court were seriously at fault, and caused the conviction of the accused though she should have been acquitted.

Before we proceed to specific portions of the charge to the jury, on which we have applicable authority, of the [fol. 131] errors therein, we wish to point out that the charge was in additional places unfair, misleading, and incorrect,—especially with a term so loose, and needing accuracy of pertinent application, as "possession and control."

Thus the Trial Judge told the jury:

> "One who deposits articles in a place of concealment may still be deemed to have them in his possession". (B. of Ex. Pg. 113)

The fact the woman in the usual way, when a roomer left his things, put them in a box or bag,—so she could use his room, as he was no longer to occupy it,—to be called for, as his right by whomever he sent for them—became the means of the Trial Judge implying—'because she did not exhibit or leave them out, she was nevertheless in possession, they being concealed'.

Again the Court used words as "detaining", "holding", so she became criminally chargeable to the jury for what was at most a mere superficial possession (in the loosest sense), and not the substantial act of a real possessor for a guilty purpose.

The Courts have warned of the danger of inaccuracy in use of such terms, lest injustice be done.

Particularly we must point to the erroneous instruction, which the Courts have declared reversible error, thus the Court said: (See B. of Ex. Pg. 112)

> "The law presumes that a sane person intends the ordinary consequences of his own voluntary acts,"—

omitting the qualifications required by law, and not using [fol. 132] the requisite words "natural and probable consequences", but "ordinary".

In the following cases such an instruction at bar, is condemned, as confusing and misleading to the jury:

282 S. W. (2d) 533, *State* v. *Cook*, pg. 535:

> "We hold that in the presence of the actual facts, as testified to here by eye witnesses, it was improper to instruct the jury concerning a presumption of intent and malice. This rule is actually no different from that in civil cases to the effect that in the face of substantial evidence of the actual facts, a presumption of fact disappears and has no evidentiary value as such, although the facts from which the presumption arose remain in the case."

260 S. W. (2d) 536, *State* v. *Martin*, Syl. 2:

"The presumption that a sane man intends the natural and probable consequences of his intentional acts is not a conclusive presumption in the sense that it is a rule of substantive law, which applies regardless of facts and which cannot be contradicted by evidence to the contrary."

Syl. 4:

"In prosecution for murder, instruction that law presumes that every person intends natural and probable consequences of his own voluntary acts, and that if he intentionally uses upon another a deadly weapon at vital part of body, he is presumed to intend death or great bodily harm to person against whom such weapon is used, was erroneous."

Syl. 7:

"Instructions to the jury dealing with abstractions are usually undesirable in criminal cases."

[fol. 133] Syl. 9:

"Presumption as to the defendant's mental intent does not exist in the presence of facts disclosed to the jury, and in such circumstances instruction on presumption should not be given".

Pg. 541: . . . "and in civil cases, we condemn instructions as confusing and misleading which tell the jury what is presumed".

Pg. 546: "Our conclusion is that, at least in those cases where the facts are fully developed by eye witnesses, instructions on presumption of intent and malice should not be given".

---

166 O. S. 138, *Ayers* v. *Woodward* (1 O. O. 2d).

Syl. 3 . . . "Where a litigant introduces evidence tending to prove a fact, either directly or by inference, which for procedural purposes would be presumed in the absence of such evidence, the presumption never arises and the case must be submitted to the jury with-

out any reference to the presumption in either a special instruction or a general charge".

Again the Court said in its charge (B. of Ex. pg. 113):

> "The test is whether or not the defendant had some degree of possession and control over the material alleged in the indictment",

Thus the jury were left to speculate as to what "some degree"—made the criminal possession and control intended by the law. Such a charge is held invalid again and again. We quote some of the cases:

> "Defendant was charged with keeping and having intoxicating liquor in her possession. *The Court instructed the jury that possession means 'some right, power or control over the corporeal thing. Held the* [fol. 134] *definition of possession was inadequate.*"

(The Facts . . . The boarders had access to the cellar . . . search warrant—5 quarts of whiskey hidden behind the fruit jars in the cellar. In room upstairs found an empty quart bottle which had contained wine which the occupant of the room had just finished drinking,—Smardy left without paying for his board)

" . . . Defendant could not be held responsible for liquor placed in her house by others surreptitiously or without her knowledge or consent.

The word "some", in the instruction given, specified nothing respecting the nature of the "right, power or control" essential to possession. . . .

. . . if defendant knew Smardy was a bootlegger, and was hiding his whiskey somewhere behind the fruit jars in her cellar, those facts alone would not make her guilty of possession of liquor. (italics ours)"

In 283 Pac. 630, *State* v. *Stewart*, a similar instruction held invalid.

III. The sentence of seven years in every event violates the Constitution of Ohio.

As we have shown, Dollree Mapp was not guilty of any crime. It could not have been the intent of the Legislature

that a woman in the position of the defendant should be sent to the penitentiary for seven years for failure to [fol. 135] destroy the articles of her roomer, which it was expected were to be called for. We say that if a mere holding under such circumstances makes one subject to so severe a penalty, that the law would be unconstitutional.

In Article 1, Section 9 of the Constitution of the State of Ohio, it is provided: "Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted".

We have shown that the current ordinances as reflected in 6 O. O. (2d), 313, *City of Cincinnati* v. *King*, impose merely a fine of $100.00 or 60 days, even for possession of such obscene literature for sale.

We have shown above that the present statute of Ohio is rare and unusual. A test of whether a punishment is cruel and unusual is laid down by the Supreme Court of U. S. in 217 United States 349, and we quote some of the syllabi therefrom.

217 U. S. 349, *Weems* v. *U. S.*

> "In determining whether a punishment is cruel and unusual as fixed by the Philipine Commission, the Court will consider the punishment of the same or similar crimes in other parts of the U. S. as exhibiting the difference between power unrestrained and that exercised under the spirit of constitutional limitation formed to establish justice.
>
> Where the minimum sentence which the Court might impose is cruel and unusual within the prohibition of a Bill of Rights, the fault is in the law and not in the sentence, and if there is no other law under which sentence can be imposed, it is the duty of the Court to declare the law void.
>
> [fol. 136] Where the sentence cannot be imposed under any law except that declared unconstitutional or void, the case cannot be remanded for new sentence . . . but the judgment must be reversed with direction to dismiss the proceeding."

We give also some additional cases as to what is a cruel and unusual punishment in contravention of the Constitution.

55 Atl. (2d) 883, *N. J. Mayor etc.* v. *Bauer.*

Syl. 4: "An Ordinance forbidding ownership without a license of automatic gum vending machine and subjecting violators to $24,600 fine or 30 years in jail for a 4 months' offense is invalid as providing "cruel and unusual punishment" in contravention of the 8th amendment and N. J. Constitution."

254 N. Y. S. 786, *People* v. *Betts.*

Syl. 2: "Jail sentence imposed for driving while intoxicated held contrary to constitutional provisions prohibiting cruel and unusual punishment, where defendant's shaken condition was due to his having suffered concussion of brain in accident.

"A free man shall not be amerced for a small offense, but only according to the degree of the offense; and for a great delinquency, according to the magnitude of the delinquency saving his contentment." (quoted by Court)

"Resort has been had to ancient precedents because they breathe the spirit of a time when man was groping for liberty and endeavoring to throw off the shackles which bound him. Our present machine age begets machine thinking and hence all of the latter day preachments counsel dumb and ox-like submission to the oppressor's yoke."

• • • • • • •

[fol. 137]

IN THE COURT OF APPEALS OF CUYAHOGA COUNTY

No. 24699

STATE OF OHIO, Plaintiff-Appellee,

—vs.—

DOLLREE MAPP a.k.a. DOLLY MAPP, Defendant-Appellant.

JOURNAL ENTRY—March 28, 1959

This cause came on to be heard on the appeal on questions of law from the judgment of the Court of Common Pleas, and was argued by counsel for the parties. Defendant found guilty of violation of Section 2905.34 R.C. by the jury upon which judgment was entered. Defendant complains particularly of error in charge and complains of sentence imposed. Upon review of the entire case, we find no error prejudicial to the rights of the defendant. (Section 2945.83 R.C.) The question of punishment is within the exclusive jurisdiction of the trial court. The judgment of the Court of Common Pleas is therefore affirmed. It is ordered that appellee recover of appellant his costs herein taxed.

It is ordered that a special mandate issue out of this Court directing the Court of Common Pleas to carry this judgment into execution. Appellant excepts.

(Signature illegible), Presiding Judge.

Approved:

Gertrude B. Mahon, Attorney for Plaintiff-Appellee.
A. L. Kearns, Attorney for Defendant-Appellant.

[fol. 138]

IN THE SUPREME COURT OF OHIO

Case No. 36091

STATE OF OHIO, Plaintiff-Appellee,

—v.—

DOLLREE MAPP, Defendant-Appellant.

Action:

Appeal from the Court of Appeals of Cuyahoga County.

Motion for Leave to Appeal from the Court of Appeals of Cuyahoga County.

Attorneys:

John T. Corrigan, Prosecuting Attorney; Gertrude B. Mahon, Asst. Pros. Atty., Court House, Cleveland, Ohio.

Kearns, Greene & Greene; A. L. Kearns, Hippodrome Bldg., Cleveland, Ohio.

MEMORANDA OF PLEADINGS, &c., FILED, WRITS ISSUED, &c., JUDGMENTS, ORDERS AND DECREES

Date	
April 24, 1959	Notice of Appeal, Motion for Leave to Appeal and proof of service filed.
April 24, 1959	Court of Appeals Transcript of Docket and Journal Entries. Original Papers and Bill of Exceptions filed.
April 30, 1959	Entry extending time for filing appellant's brief to May 27, 1959. Carl V. Weygandt, Chief Justice, Journal 43, page 114.
May 27, 1959	Assignment of errors and appellant's printed brief filed.

Date	
May 27, 1959	Cause docketed on appeal as of right.
June 11, 1959	Appellee's printed brief filed. Proof of service filed.
June 13, 1959	Motion by appellee to dismiss appeal as of right.
September 11, 1959	Appellant's printed reply brief and proof of service filed.
October 7, 1959	Motion by Appellee to dismiss appeal as of right—overruled. Journal 43, page 223.
[fol. 139]	
October 7, 1959	Motion for Leave to Appeal from the Court of Appeals of Cuyahoga County —Allowed. Journal 43, page 223.
October 7, 1959	Letter advising allowance of motion for leave issued.
October 15, 1959	Assignments of Error and Appellant's printed brief refiled and proof of service filed.
October 15, 1959	Cause stands for hearing on appeal as of right.
October 24, 1959	Application of Ohio Civil Liberties Union for Leave to file brief amicus curiae herein filed.
October 26, 1959	Entry granting Fred J. Livingstone leave to file brief amicus curiae on behalf of Ohio Civil Liberties Union on or before December 15, 1959. Carl V. Weygandt, Chief Justice, Journal 43, page 247.
October 26, 1959	Appellee's printed brief on motion refiled and proof of service filed.

Date	
December 15, 1959	Printed brief amicus curiae of Ohio Civil Liberties Union filed. 12/16/59 Proof of Service filed.
January 11, 1960	Defendant's Exhibits A, B & C and State's Exhibits 1 to 13, Inc. filed.
March 23, 1960	Judgment affirmed. Journal 43, page 410.
March 29, 1960	Notified application for rehearing to be filed.
April 4, 1960	Application for rehearing filed.
April 13, 1960	Rehearing denied. Journal 43, page 430.
April 13, 1960	Mandate issued.
April 22, 1960	Application for stay of execution, proof of service and consent filed.
April 26, 1960	Application for stay of execution granted. Carl V. Weygandt, Chief Justice, Journal 43, page 445.
April 26, 1960	Certified copy of entry staying execution sent to A. L. Kearns.
June 15, 1960	Notice of Appeal to United States Supreme Court filed.
June 30, 1960	Original papers and Bill of Exceptions sent to Mr. Greene. Exhibits retained.
July 19, 1960	Exhibits sent to Clerk of Courts.
July 25, 1960	Acknowledgment of Exhibits received and filed.

[fol. 140]

IN THE SUPREME COURT OF OHIO

JOURNAL ENTRIES

Journal 43, Page 114
Entry

Upon application of appellant and for good cause shown, it is ordered that the time for filing appellant's brief on motion herein be, and the same hereby is, extended to May 27, 1959. /s/ Carl V. Weygandt, Chief Justice.

Journal 43, Page 223
Motion by Appellee to Dismiss Appeal as of Right.
Cuyahoga County.

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Journal 43, Page 223
Motion for Leave to Appeal From the Court of Appeals of Cuyahoga County.

It is ordered by the Court that this motion be, and the same hereby is, allowed.

Journal 43, Page 247
Entry

Upon application and for good cause shown, it is ordered that Fred J. Livingstone is hereby given leave to file brief amicus curiae herein on behalf of Ohio Civil Liberties Union on or before December 15, 1959. /s/ Carl V. Weygandt, Chief Justice.

Journal 43, Page 410
Appeal From the Court of Appeals of Cuyahoga County.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby,

affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellant its costs herein expended taxed at $ .....

Ordered, That a special mandate be sent to the Court of Common Pleas of Cuyahoga County, to carry this Judgment into Execution.

Ordered, That a copy of this entry be certified to the Clerk of the Court of Appeals of Cuyahoga County, "for entry."

[fol. 141]
Journal 43, Page 430
Application for Rehearing

Upon consideration of the above application for rehearing, it is ordered by the Court that rehearing be, and the same hereby is, denied.

Journal 43, Page 445
Entry

This cause having come on to be heard this 26th day of April, 1960, upon the motion of Dollree Mapp for a stay of execution.

The Court being fully informed of the cause and reasons set forth in said motion and upon due consideration thereof, finds that said motion should be granted.

It is therefore ordered, judged and decreed that execution of the sentence passed upon the Defendant, Dollree Mapp, Appellant, by the Court of Common Pleas of Cuyahoga County, Ohio, be stayed until further order of this Court and that the bond now in full force and effect heretofore issued and furnished by the said Defendant, Dollree Mapp, which said bail bond is now of record in this matter, shall remain in full force and effect until further order of this Court. /s/ Carl V. Weygandt, Chief Justice.

[fol. 142]

IN THE SUPREME COURT OF OHIO

ASSIGNMENTS OF ERROR—Filed May 27, 1959

Defendant-Appellant, for her Assignments of Error herein, says that on or before the 4th day of September, 1958, in the Court of Common Pleas of Cuyahoga County, Criminal Branch No. 68,326 the defendant was found guilty by a jury on an indictment under R. C. 2905.34, charging possession "of certain lewd books and pictures," the conviction and sentence to the Ohio Reformatory for Women (7 years) was appealed to the Court of Appeals, which affirmed; all of which more fully appears by the transcript, docket and journal entries and original papers filed herewith and made a part hereof.

Said Court of Appeals erred in the following respects:

The judgment of the Court of Appeals should have been a reversal of the judgment of the Court of Common [fol. 143] Pleas and a discharge of the defendant upon the grounds that:

1. The alleged crime charged in the indictment was not supported by the evidence;

2. The Court of Common Pleas erred in its instructions to the jury to which objection and exceptions were duly made.

3. Defendant-appellant, by the charge of the Court, was deprived of her right to trial by jury, in violation of Article I, Bill of Rights, Paragraph 5, Constitution of Ohio.

4. Defendant-Appellant's sentence, at all events, was in violation of Article I, Bill of Rights, Paragraph 9. Constitution of Ohio, to wit: "Nor cruel and unusual punishments inflicted."

5. R. C. 2905.34, Ohio, under which this defendant was indicted, tried, convicted and sentenced is unconstitutional and deprived defendant-appellant of her rights and liberty

in violation of Article I, para. 1 of the Bill of Rights of Ohio;—Article I, para. 9 of the Bill of Rights of Ohio;—and Amendment XIV, Section 1 of the Constitution of the United States.

6. The trial, conviction, and sentence of the defendant-appellant, and the affirmance thereof by the Court of Appeals, as revealed by the acts of the prosecution, and the police officers entering into appellant's premises and their conduct thereafter, and the production of the papers, books, pictures etc., as evidence was contrary to the rights of the defendant in violation of Article I, paragraphs 1 and 14 of the Bill of Rights of the Constitution of Ohio, and Amendment XIV, Section 1 of the Constitution of the United States.

[fol. 144] 7. In refusing to review the sentence imposed by the Court of Common Pleas, upon the ground that the Court of Appeals has no jurisdiction to review the sentence, contrary to Article IV, para. 6 of the Constitution of the State of Ohio, and the statutes thereof.

8. Other errors appearing on the record.

Wherefore, defendant-appellant herein prays that the judgment of affirmance in the Court of Appeals be reversed and set aside, to the end that the judgment and sentence of the Court of Common Pleas be reversed and set aside, and that there be rendered the judgment which should have been rendered, to wit: an acquittal and judgment for the defendant; and that she be restored to all that she has lost.

[fol. 145]

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO, Appellee.

—v.—

MAPP, Appellant.

Criminal law—Knowingly possessing obscene literature—Section 2905.34, Revised Code—Evidence—Sufficient to convict—Obscene literature unlawfully seized during unlawful search—Appeal—Constitutionality of statute—Affirmance of conviction.

1. Assuming the constitutional validity of the part of Section 2905.34, Revised Code, which prohibits any person from knowingly having in his possession or under his control lewd or lascivious books and pictures, a defendant may be convicted thereunder where the evidence discloses that, in packing up the belongings of a former roomer in such defendant's home, such defendant found lewd and lascivious books and pictures and packed them with such former roomer's other belongings for the purpose of storing them for him until he came for them.

2. A conviction thereunder may be valid although that conviction is based primarily upon the introduction in evidence of lewd and lascivious books and pictures unlawfully seized during an unlawful search of defendant's [fol. 146] home, where it does not appear that such evidence was taken from defendant's person by the use of brutal or offensive force against defendant. (*State* v. *Lindway*, 131 Ohio St., 166, followed.)

3. Where a majority of less than six members of the Supreme Court are of the opinion that the portion of a statute upon which a conviction is based is unconstitutional and void but no other reversible error appears in the record, a judgment of the Court of Appeals sustaining such conviction must be affirmed. (Section 2 of Article IV of the Constitution applied.)

OPINION—Decided March 23, 1960

Appeal from the Court of Appeals for Cuyahoga County.

Defendant was indicted for "unlawfully and knowingly" having "had in her possession and under her control, certain lewd and lascivious books, pictures and photographs."

This indictment was based upon Section 2905.34, Revised Code, which reads in part:

"No person shall knowingly * * * have in his possession or under his control an obscene, lewd, or lascivious book * * * print, [or] picture * * *.

"Whoever violates this section shall be fined not less than $200 nor more than $2,000 or imprisoned not less than one nor more than seven years, or both."

The verdict of the jury found the defendant "guilty of possession of obscene literature as charged in the indictment." Defendant's motion for a new trial was overruled and the Common Pleas Court rendered judgment sentencing defendant to imprisonment in the Ohio Reformatory for Women for an indeterminate period.*

On appeal to the Court of Appeals, that judgment was affirmed.

The cause is now before this court on appeal from the judgment of the Court of Appeals.

[fol. 147] Mr. John T. Corrigan, prosecuting attorney, and Mrs. Gertrude Bauer Mahon, for appellee.

Mr. A. L. Kearns, for appellant.

TAFT, J.:

The books and pictures in evidence in the instant case clearly represent, and the undisputed evidence in the record indicates, that defendant knew at the time she is charged with having possessed them that they represented lewd and

* Section 5143.05, Revised Code, reads in part:

"Courts imposing sentences to the reformatory shall make them general, and not fixed or limited in their duration. The term of imprisonment shall be terminated by the Pardon and Parole Commission * * * but * * * shall not exceed the maximum term, nor be less than the minimum term provided for such felony."

lascivious books and pictures. However, defendant contends that they were not "in [her] possession or under [her] control" within the meaning of the words of Section 2905.34, Revised Code.

Defendant offered evidence to prove that these books and pictures belonged to a man who had rented from her and occupied a room in her home; that, when she learned he was not going to return or use the room for the balance of the last month for which he had rented it, she decided to use the room for herself and to pack up his belongings and store them until he came for them; that, in doing so, she found these lewd and lascivious books and pictures and packed them in a box and one of her suitcases with his other belongings with the purpose of storing them until he came for his belongings; and that she never looked at these books and pictures again before they were seized by the police.

In our opinion, this evidence of defendant establishes that she had these books and pictures "in * * * [her] possession or under * * * [her] control" within the meaning of those words as used in Section 2905.34, Revised Code.

Her evidence clearly discloses that defendant not only took possession and control of the room which she had rented but also of the belongings of her former tenant, including the books and pictures which the undisputed evidence shows that she knew to be lewd and lascivious.

Hence, it follows that, if the portion of Section 2905.34, Revised Code, that was applied in the instant case, is not unconstitutional and void, then, even if we assume that there were errors in the trial court's charge as defendant argues, such errors could not have prejudiced defendant. It be-[fol. 148] comes necessary therefore to consider whether the constitutional questions raised require a reversal of the judgment under review.

Defendant contends that the due process clause of the 14th Amendment to the Constitution of the United States was violated by her conviction for possession and control of these books and pictures since that conviction was based primarily upon their unlawful seizure from her during an unlawful search of her home.

There is, in the record, considerable doubt as to whether there ever was any warrant for the search of defendant's

home. No warrant was offered in evidence, there was no testimony as to who issued any warrant or as to what any warrant contained, and the absence from evidence of any such warrant is not explained or otherwise accounted for in the record. There is nothing in the record tending to prove or from which an inference may be drawn, and no one has even suggested that any warrant that we may assume that there may have been described anything other than policy paraphernalia as things to be searched for. Our statute (Section 2933.24, Revised Code) requires a search warrant to "particularly describe the things to be searched for." See also Section 2905.35, Revised Code. Our Constitution (Section 14 of Article I) specifically forbids the issuance of any such warrant except "upon probable cause, supported by oath or affirmation, . particularly describing the place to be searched * * * and things to be seized." Admittedly therefore there was no warrant authorizing a search of defendant's home for any "lewd, or lascivious book * * * print, [or] picture."

However, this court has held that evidence obtained by an unlawful search and seizure is admissible in a criminal prosecution. *State* v. *Lindway*, 131 Ohio St., 166, 2 N. E. (2d), 490 (appeal dismissed and certiorari denied, 299 U. S., 506, 81 L. Ed., 375, 57 S. Ct., 36); and the Supreme Court of the United States has held that the Constitution of the United States does not usually prevent a state court from so holding. *Wolf* v. *Colorado*, 338 U. S., 25, 93 L. Ed., 1782, 69 S. Ct., 1359, *Stefanelli* v. *Minard*, 342 U. S., 117, 96 L. Ed., 138, 72 S. Ct., 118. Subsequently, in *Rochin* v. *California*, 342 U. S., 165, 96 L. Ed., 183, 72 S. Ct., 205, 25 A. L. R. [fol. 149] (2d), 1396, that court held that a conviction, obtained primarily by introducing in evidence narcotics seized not only during an illegal search but by means of a physical assault upon the defendant, violated the due process clause. Although there are statements in the majority opinion in that case which will support a reasonable argument that the conviction in the instant case should be set aside because the "methods" employed to obtain the books and pictures were such as to "offend 'a sense of justice,'" later decisions have refused to follow that case in instances not involving the acquisition of incriminating evidence by the

use of "'brutal' or 'offensive'" physical force against the person of the defendant. *Breithaupt* v. *Abram, Warden*, 352 U. S., 432, 1 L. Ed., (2d), 448, 77 S. Ct., 408. See also *Irvine* v. *California*, 347 U. S., 128, 98 L. Ed., 561, 74 S. Ct., 381 (evidence obtained by use of microphone illegally placed in defendant's home). Annotations 93 L. Ed., 1797, 96 L. Ed., 145, 98 L. Ed., 581, 100 L. Ed., 239, 50 A. L. R. (2d), 531. There is no evidence that any of the incriminating evidence in the instant case was taken from defendant's person by the use of brutal or offensive physical force against defendant.

Hence, we conclude that, if the portion of Section 2905.34, Revised Code, applied in the instant case is valid, the due process clause of the 14th Amendment to the Constitution of the United States was not violated by defendant's conviction, although that conviction was based primarily upon the introduction in evidence of books and pictures unlawfully seized during an unlawful search of defendant's home.

The constitutionality of the regulation of obscene literature is considered in a recent annotation in 1 L. Ed. (2d), 2211. That annotation does not indicate that there is any case decided by a court of last resort, and we can find none, considering the validity of a legislative prohibition against a mere knowing possession of lewd books and pictures. In most instances of legislation prohibiting possession of such articles, possession is prohibited, as it was under Section 2905.34, Revised Code (formerly Section 13035, General Code), prior to its amendment in 1939, where such possession is for the purpose of sale, lending, giving away, ex-
[fol. 150] hibiting or publishing. Under our statute as now worded, mere possession is forbidden even where the possessor does not have a purpose of again looking at the books or pictures; and, in the instant case, the jury could have found the defendant guilty and she could have been (as she was) sentenced as a felon, even though it believed her evidence that she had innocently acquired possession of these articles, had no intention of ever looking at them again and was merely keeping them pending instructions for their disposition from their owner. Cf. *Lambert* v. *California*, 355 U. S., 225, 2 L. Ed. (2d), 228, 78 S. Ct., 240, *Weems* v. *United States*, 217 U. S., 349, 54 L. Ed., 793, 30 S. Ct., 544.

If, as defendant's evidence discloses, defendant took possession and control of these books and pictures when she took possession of the room that had been occupied by her tenant and endeavored to pack up his things for him and, while doing that, necessarily learned of their lewd and lascivious character, then at that instant she had "in" her "possession" and "under" her "control" a "lewd or lascivious book * * * print [or] picture" as prohibited by this statute.

If such a legislative prohibition of possession of books and papers is valid, it may discourage law abiding people from even looking at books and pictures and thus interfere with the freedom of speech and press guaranteed by Articles I and XIV of the Amendments to the Constitution of the United States.

Smith v. *California* (1959), U. S., , 4 L. Ed. (2d), 205, 80 S. Ct., 215, held invalid a legislative provision that made it "unlawful for any person to have in his possession any obscene or indecent writing, [or] book * * * in any place of business where * * * books * * * are sold or kept for sale."

In the court's opinion by Mr. Justice Brennan it is said:

"We have held that obscene speech and writings are not protected by the constitutional guarantees of freedom of speech and the press. *Roth* v. *United States*, 354 U. S., 476, 1 L. Ed. (2d), 1498, 77 S. Ct., 1304. * * * our holding in *Roth* does not recognize any state power to restrict the dissemination of books which are not obscene; and we think this ordinance's strict liability feature would tend seriously to [fol. 151] have that effect, by penalizing booksellers, even though they had not the slightest notice of the character of the books they sold. * * * if the bookseller is criminally liable without knowledge of the contents, and the ordinance fulfills its purpose, he will tend to restrict the books he sells to those he has inspected; and thus the state will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature. * * * the bookseller's burden would become the public's burden, for by restricting him the public's access to reading matter would be restricted. If the contents of bookshops and periodical stands were restricted to material of which their proprietors had made an inspection, they might be depleted indeed. The

bookseller's limitation in the amount of reading material with which he could familiarize himself, and his timidity in the face of his absolute criminal liability, thus would tend to restrict the public's access to forms of the printed word which the state could not constitutionally suppress directly. The bookseller's self-censorship, compelled by the state, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded."

It may be argued that the legislation involved in the instant case, unlike that involved in the *Smith case*, requires *scienter* because it only makes it unlawful to *"knowingly* * * * have * * * possession." However, this legislation is analogous in its effect to that in the *Smith case*. If anyone looks at a book and finds it lewd, he is forthwith, under this legislation, guilty of a serious crime, which may involve a sentence to the penitentiary similar to the one given to this defendant. As a result, some who might otherwise read books that are not obscene may well be discouraged from doing so and their free circulation and use will be impeded. Cf. *Benjamin* v. *City of Columbus*, 167 Ohio St., 103, 146 N. E. (2d), 854, where no question of freedom of press involved.

In the opinion of Judges Taft, Bell, Herbert and Peck, the portion of Section 2905.34, Revised Code, upon which defendant's conviction was based, is constitutionally invalid, and, for that reason, the judgment of the Court of Appeals [fol. 152] should be reversed. However, Section 2 of Article IV of the Constitution of Ohio reads in part:

"No law shall be held unconstitutional and void by the Supreme Court without the concurrence of at least all but one of the judges, except in the affirmance of the judgment of the Court of Appeals declaring a law unconstitutional and void."

Since more than one of the judges of this court are of the opinion that no portion of the statute upon which defendant's conviction was based is unconstitutional and void, the judgment of the Court of Appeals must be affirmed.

Judgment affirmed.

ZIMMERMAN and PECK, JJ., concur:

MATTHIAS, J., concurs in paragraphs two and three of the syllabus and in the judgment.

WEYGANDT, C. J., concurs in the judgment.

BELL and HERBERT, JJ., concur in paragraphs one and three of the syllabus but dissent from paragraph two thereof and from the judgment.

HERBERT, J., dissenting:

Although I concur in paragraphs one and three of the syllabus, I must dissent from paragraph two which follows *State* v. *Lindway*, 131 Ohio St., 166, 2 N. E. (2d), 490, and the judgment. The facts are sufficiently stated in the majority opinion.

Section 14, Article I of the Ohio Constitution, provides:

"The right of the people to be secure in their persons, houses, papers, and possession, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized."

The judgment in the *Lindway case* is not in conflict with this constitutional provision. Had I been a member of this court at that time I would have joined in the judgment as all the members of the court then did because the evidence there clearly established that the defendant was operating a bomb manufacturing shop in the basement of that house. [fol. 153] As stated by Jones, J., in the concurring opinion in that case:

"This defendant was suspected of manufacturing bombs and of being engaged in the nighttime bombing of the homes of employees of a manufacturing company. If the search produced evidence of his projected crime, the evidence should have been admitted; for neither Constitution nor state law was intended to provide security for such dangerous enemies to our public peace."

The foregoing sentence contains ample legal foundation and justification for the judgment affirming the conviction

there. As to that portion of the syllabus, however, relating to evidence obtained by an unlawful search—in which only a bare majority concurred—it seems to me to be far too comprehensive and susceptible to abuse by police and prosecution authorities. As a rule, abuses by such officials rarely occur but when they do the constitutional rights of the private citizen should be fully protected. The broad scope of the rule relating to evidence obtained by an unlawful search, as stated in the *Lindway* syllabus, leads me to the inescapable conclusion that in too many instances it virtually sterilizes the constitutional guarantees provided by Section 14, Article I.

On the basis of the constitutionality of Section 2905.34, Revised Code, which is fully discussed and disposed of in the majority opinion, this case seems to me to afford a perfect opportunity for the court to modify and limit the *Lindway* rule in the direction indicated by Jones, J., so as to bring it into accord with a more reasonable interpretation of the above-quoted provision of the Constitution and the requirements of the statutes enacted to implement it.

Section 13035, General Code (now Section 2905.34, Revised Code), provided, from 1910 to 1939, as follows:

"Whoever sells, lends, gives away, exhibits, or offers to sell, lend, give away or exhibit, or publishes or offers to publish or has in his possession *for such purpose*, an obscene, lewd or lascivious book * * *." (Emphasis added.)

In fact, the emphasized words read "for any such purpose" from 1894 until 1910.

[fol. 154] In 118 Ohio Laws, 420 (1939), the emphasized words were stricken and the words, "or has under his control," were inserted in their place.

In 120 Ohio Laws, 230 (1943), the word, "knowingly," was inserted after the opening word, "whoever." In the same act, Section 13035-1, General Code (now Section 2905.35, Revised Code), was passed, providing for the issuance of search warrants for suspected violation of the preceding section and also providing for the disposition of articles seized under such warrants. The last sentence of this search-warrant statute now reads:

"The magistrate shall immediately transmit every article seized by virtue of the warrant, to the prosecuting attorney, who shall, upon conviction of the person from whose possession the same was taken, cause it to be destroyed, and the fact of such destruction to be entered upon the records of the court in which the conviction is had."

Ironically enough, there being no evidence of the issuance of a search warrant for obscene books, the provisions of this last sentence are not applicable to the disposition of the evidence in the instant case.

In addition to the specific provisions of Section 2905.35, Revised Code, Section 2933.21, Revised Code, provides:

"A judge of a court or a magistrate may, within his jurisdiction, issue warrants to search a house or place:

"• • •

"(D) For books, pamphlets, ballads, or printed papers containing obscene language, prints, pictures • • • and for obscene, lewd, indecent, or lascivious drawings, lithographs, engravings, pictures • • •."

This provision has been in substantially the same form since 1876.

In the light of the *Lindway* rule and the decision in this case, one may well ask why the Legislature in 1943 enacted Section 13035-1, General Code (now Section 2905.35, Revised Code), particularly in view of the fact that Section 2933.21 (D), Revised Code, has for many years provided for search warrants in such cases.

[fol. 155] Under the principle stated by Jones, J., in his concurring opinion in *Lindway*, a conviction could well be sustained in this case if books had been discovered in the home of defendant in quantities indicating a purpose to sell, lend, give away, exhibit or offer to do so (see "for such purpose," *supra*), but on the facts here it seems to the writer that the constitutional right of this defendant "to be secure • • • against unreasonable searches and seizures" was violated.

It is a basic principle that laws restraining the fundamental liberties of the individual must have as their founda-

tion a broad basic public need which overshadows the rights of the individual. While we agree that the dissemination of obscene literature such as that produced in evidence in the present case is and should be against public morals and policy if for no other reason than that the immature mind which might be exposed to it could be greatly harmed, I cannot agree that mere private possession of such literature by an adult should constitute a crime. The right of the individual to read, to believe or disbelieve, and to think without governmental supervision is one of our basic liberties, but to dictate to the mature adult what books he may have in his own private library seems to the writer to be a clear infringement of his constitutional rights as an individual. Does the state have the power to prohibit the possession of chemistry books because from such books one might learn how to make a bomb or poisonous gas? Is the possession of medical books by a layman to be banned because of the possibility that he might learn about abortion and perhaps put such knowledge to use?

The foregoing paragraph is perhaps more applicable to a discussion of the constitutionality of Section 2509.34, Revised Code, than to the issue on which I dissent, but, since under another provision of the Constitution a bare majority of this court is powerless to invalidate the portion of that section under which the defendant was convicted, we certainly should scan carefully the method by which the evidence was acquired for such conviction. I would hold no brief for the defendant here if the evidence had disclosed a commercial purpose in the possession of these books. Had there been found printing presses with evidence of their criminal use or a sufficient volume of books to indicate the [fol. 156] purpose of distribution, commercial or otherwise, we might well hold that the privacy and constitutional immunity of defendant's home from unlawful search and seizure had been lost by her own conduct (as in the *Lindway case* where a bomb factory was discovered), but on the undisputed facts, as disclosed in this record, I cannot so conclude. See, also, paragraph two of the syllabus in *Ciano* v. *State*, 105 Ohio St., 229, 137 N. E., 11.

As disclosed in 50 A. L. R. (2d), 531, the states are now about evenly divided between the extremes of the so-called federal rule on search and seizure and the rule as stated in *Lindway*, indicating a trend away from the *Lindway* rule since the time of its decision.

A violator of Section 2905.34, Revised Code, may, upon conviction, be either fined, jailed or sent to the penitentiary.

As Jones, J., stated in his concurrence in the *Lindway case*: "It is not for the class of criminal element alluded to, but for the class embodying millions of citizens who are innocent of any offense or whose offenses are minor, that I urge protection under the search and seizure clause of the state Constitution. The decision of this court in the instant case is too broad, since it is made to apply to everyone suspected of committing any offense whatever. There is one advantage the occupant of a bona fide dwelling now has and always has had—he could discover whether a search warrant had in fact been issued and for, his own protection, could demand its production."

Here, the defendant did just that and the evidence is uncontradicted that she was not given an opportunity to read it, if any was issued. In fact, it was not even contended by the prosecution that a warrant was ever issued authorizing a search of her home for obscene literature. In my view, the *Lindway* rule which is being followed in this case should be modified and clarified so that there will no longer be a judicial stamp of approval on the use of unlawful means to justify an end result. Here an admittedly private home was unlawfully searched, and I cannot concur in a judgment upholding conviction based solely on evidence so obtained.

Bell, J., concurs in the foregoing dissenting opinion.

[fol. 157] Clerk's Certificate (omitted in printing).

[fol. 158]

IN THE SUPREME COURT OF THE STATE OF OHIO

Criminal Case No. 36091

THE STATE OF OHIO, Plaintiff-Appellee,

—vs.—

DOLLREE MAPP a.k.a. DOLLY MAPP, Defendant-Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed June 15, 1960

I. Notice is hereby given that Dollree Mapp, the Appellant above named, hereby appeals to the Supreme Court of the United States from a final order of the Supreme Court of the State of Ohio entered herein on the 23rd day of March, 1960, affirming the judgment of conviction of an appellate judgment of conviction of the Court of Appeals for the Eighth Judicial District, Cuyahoga County, State of Ohio, which in turn, affirmed a judgment of conviction of the Court of Common Pleas of Cuyahoga County; although four (4) of the seven (7) judges of the Supreme Court of Ohio held that the judgment of the Court of Appeals should be reversed, because the statute under which the defendant-appellant was convicted was unconstitutional, [fol. 159] but that however, under Section 2, Article IV of the Constitution of Ohio, since more than one of the Judges of the Supreme Court of Ohio were of the opinion that the statute was constitutional, the judgment had to be affirmed.

This Appeal is taken pursuant to 28 U.S.C. Section 1257 (2).

Appellant was convicted of the crime that she "unlawfully and knowingly had in her possession and under her control, certain lewd and lascivious books, pictures and photographs, being so indecent and immoral in their nature that the same would be offensive to the Court and improper to be placed on the records thereof" in violation of Section 2905.34, Ohio Revised Code, was sentenced from one (1) to seven (7) years confinement in the Ohio State Women's

Reformatory and is presently at large on bail in the sum of Two Thousand Five Hundred Dollars ($2,500.00).

II. The Clerk will prepare a transcript of the record in the cause for transmission to the Clerk of the Supreme Court of the United States, and include in such transcript [fol. 160] the following:

THE ENTIRE RECORD

III. The following questions are presented by this Appeal:

(a). Is Section 2905.34 Ohio Revised Code unconstitutional under Amendment IV, Amendment V, Amendment XIV Section 1, of the United States Constitution; and Article I Section 1, Article I Section 2, Article I Section 16, Article I Section 19, Article II Section 1, Article II Section 26, of the Ohio Constitution?

(b). Is Section 2905.34 Ohio Revised Code unconstitutional under Amendment IV, Amendment V, Amendment XIV Section 1, of the United States Constitution; and Article I Section 1, Article I Section 2, Article I Section 16, Article I Section 19, Article II Section 1, Article II Section 26, of the Ohio Constitution; as applied to the facts and circumstances of the case at bar?

(c). Does a sentence of seven (7) years for violation of Section 2905.34 Ohio Revised Code violate Amendment VIII of the United States Constitution; and Article I Section 9 of the Ohio Constitution?

(d). Does a sentence of seven (7) years for violation of Section 2905.34 Ohio Revised Code under the facts and circumstances of the case at bar, violate Amendment VIII of the United States Constitution; and [fol. 161] Article I Section 9 of the Ohio Constitution?

(e). Did the conduct of the police in procuring the books, papers and pictures placed in evidence by the Prose-

cution violate Amendment IV, Amendment V, and Amendment XIV Section 1 of the United States Constitution; and Article I Section 1, and Article I Section 14 of the Ohio Constitution?

(f). Did the Court of Appeals of Ohio violate Article IV Section 6 of the Ohio Constitution in holding that it could not review the sentence of the trial court?

(g). Is a charge by a court to a jury on presumption, thereby effectively depriving defendant of a trial by jury, unconstitutional under Amendment V, Amendment VI, and Amendment XIV Section 1 of the United States Constitution; and Article I Section 5, and Article I Section 10, of the Ohio Constitution?

(h). Did other charges to the jury by the Court violate Amendment V, Amendment VI, and Amendment XIV Section 1 of the United States Constitution; and Article I Section 5, and Article I Section 10 of the Ohio Constitution?

Walter L. Greene, A. L. Kearns & Walter L. Greene, 1101 Hippodrome Building, Cleveland 14, Ohio, MAin 1-4908, Attorneys for Defendant-Appellant.

[fol. 162] SERVICE

Copy of foregoing Notice of Appeal received this 14 day of June, 1960.

John T. Corrigan, Prosecuting Attorney for Cuyahoga County, Ohio, and Gertrude Bauer Mahon, Assistant Prosecuting Attorney, By John T. Corrigan, A. W.

[fol. 163]

SUPREME COURT OF THE UNITED STATES

No. 236—October Term, 1960

DOLLREE MAPP, etc., Appellant,

vs.

OHIO.

ORDER NOTING PROBABLE JURISDICTION—October 24, 1960

Appeal from the Supreme Court of the State of Ohio.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

October 24, 1960